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THE  
GROWTH OF THE CONSTITUTION  
IN THE  
FEDERAL CONVENTION OF 1787

AN EFFORT  
TO TRACE THE ORIGIN AND DEVELOPMENT OF EACH SEPARATE CLAUSE  
FROM ITS FIRST SUGGESTION IN THAT BODY TO  
THE FORM FINALLY APPROVED

CONTAINING ALSO  
A *FAC-SIMILE* OF A HERETOFORE UNPUBLISHED MANUSCRIPT OF  
THE FIRST DRAFT OF THE INSTRUMENT MADE FOR  
USE IN THE COMMITTEE OF DETAIL

BY  
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SECOND EDITION

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## PREFACE.

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I HAVE on more than one occasion wanted to know accurately the history and development of some particular clause of the United States Constitution in the Convention of 1787, but have always found it very difficult to succeed in tracing the matter out to my satisfaction. Even with the aid of the index and cross-references contained in Volume V. of Elliot's "Debates," it is a very wearying process to follow a particular portion of the instrument through the whole Convention; and, indeed, no matter how carefully this is done, one is sure to miss a good many ideas which were thrown out at times when entirely different portions of the instrument were under consideration. In an instance some two years ago, when I thought a recent writer was in error, I again wanted to know the exact origin of a particular clause, and again had all the usual difficulty and the unsatisfactory result. Thinking over the matter at that time led me to wonder whether it would not be possible and worth while to go through all the proceedings of the Convention and write a history of each separate clause. The following book is an outgrowth of that idea. Taking the matter up from the beginning, I went through the debates with the view of referring each separate discussion to its appropriate portion of the final instrument: in this many difficulties came up, and they seemed at times to be almost insuperable, but gradually they disappeared,

and I feel that the work is now accurate. It was very clearly the best plan to follow as closely as possible the process in the minds of members of the Convention, by which the various clauses were formed, and in my task I accordingly first referred all the early discussions to the separate resolutions of the Virginia plan. But on August 6 a formed draft of a constitution was presented from the Committee of Detail, and the debates were then all directed to the clauses of this instrument. It became necessary accordingly for me not only to refer the various discussions which followed to this new guide, but to break up the previous matter and refer it to the same. And once more the whole previous matter had to be much broken up, when the Committee on Style presented the instrument in almost its final form on September 12. In all this process there was, of course, much danger of errors and omissions, and, accordingly, after the whole matter was in rough shape, with each discussion and each unformed idea referred to that section and clause of the final constitution, on which it had influence, I again went through the debates from beginning to end, to satisfy myself that the discussions were referred to the clause of the Constitution to which they naturally belong. One matter of difficulty at times has been to decide how much to subdivide the clauses in considering them, but I have been guided by their historical development in the Convention. Where several clauses were integral parts of one compromise, or where they all grew up largely at one time, I have generally considered them together; otherwise, separately.

I have carefully confined my work to the origin and growth of the clauses within the Convention, and have

not touched upon any question as to their earlier source. Any one who desires to take this question up can do so with the aid of Mr. Fisher's "Evolution of the Constitution."

It has been a good deal discussed among different writers whether Gladstone's famous saying\* of the United States Constitution is true or untrue. In my opinion, the answer is only to be found by first ascertaining just what he meant. If he can be interpreted as intending to say that it was new in the sense that the telephone is new within a few years, then nothing more false and even absurd has often been uttered. But I do not at all suppose for my part that that is what Gladstone did mean ; on the contrary, he intended merely to say that it was the most wonderful instance in which pre-existing materials had been suddenly molded into a harmonious whole by one set of men appointed for that specific purpose, in contradistinction to the frame of the British government, which has grown through ages and by the largely unconscious working of generations of men, whose aim was by no means to draw up a whole constitution, but at most to patch up some special part which seemed to them defective. Gladstone was too much versed in governmental science not to know that the elements of the American Constitution—to use the words† of Mommsen, which are used by him in regard to the earliest Roman constitution, but are of universal application—

\* "As the British Constitution is the most subtle organism which has proceeded from progressive history, so the American Constitution is the most wonderful work ever struck off at a given time by the brain and purpose of man."

† History of Rome, i. 104.

were “neither manufactured nor borrowed, but grew up amidst and along with the [American] people.”

When my work was very nearly done, my attention was called to the draft of a constitution in Edmund Randolph’s handwriting, which is treated of by Mr. Moncure D. Conway in *Scribner’s Magazine* and in his “Life of Edmund Randolph,” and is now reproduced in fac-simile in this book. I was at once satisfied—for the reasons detailed at length in a note upon the subject—that this paper was quite different from that which Mr. Conway considered it, and that it was a relic of very great interest and of some historical importance. I accordingly proceeded to ascertain in whose hands the original was preserved, and soon found it to be in the possession of Mrs. St. George Tucker Campbell, of this city, a great-granddaughter of George Mason. With her kind permission, I have had it reproduced. It serves to illustrate the gradual growth of many of the separate clauses, and to show how they were evolved step by step. How it came to be among the papers of George Mason, where it was found, is not known; but, for my part, I do not think it unlikely that he had a great part in drawing it. Randolph was evidently much influenced in the Convention by Mason’s views.

I cannot but hope that my work may be of some service to those interested in the study of the Constitution by putting before them the whole origin and growth of each clause from beginning to end in the Convention. For myself, I see now far more clearly than ever before the purpose the members aimed at in some of the clauses; and the development of Article VI., Clause 2, as to the Constitution and laws being

the supreme law of the land, seems to me a demonstration that many of the members of the Convention distinctly and definitely aimed by that clause (with the aid of Article III., Section 2, as to the judicial power of the federal government) to establish that system of the courts' holding laws void because of violating the Constitution or the federal laws with which we are now all so familiar. I had formerly supposed\* that this plan was, at most, only in the minds of a few members, and that even their minds were hardly more than groping in the dark upon it, but this was an error. The late Mr. Coxe, the well-known author of "Judicial Power and Unconstitutional Legislation," would have been much interested in the history of this particular clause.

It was manifestly impossible to insert in the following work every proposition which was made in the Convention and defeated; but some of these were too important to omit, and are accordingly inserted under a heading of "Some Important Defeated Proposals." Some strange propositions were made, and may well cause surprise at their appearance in a body so deserving of admiration and around which our reverence has possibly painted the halo of brighter colors even than it should be. Among these may be mentioned one to fix by the Constitution the salary of Senators by establishing a system for paying them the value of a fixed number of bushels of wheat. Madison regretted that

\* See my article on "The Relation of the Judiciary to the Constitution" in *The American Law Review* for March–April, 1885, pp. 175–203, containing a review of the powers of the judiciary in regard to unconstitutional legislation, and tracing the earliest cases upon the subject.

some such system could not be adopted, but the average sound sense of the Convention soon brushed aside this impracticable scheme. Those weighed down by the corruption of modern times may possibly find some consolation in reading that a hundred and twelve years ago, in the very times of our heroic age, Mason lamented our decadence, and ironically suggested to strike out all provision against members of the legislature holding office: "in the present state of American morals and manners," he said, "few friends, it may be thought, will be lost to the plan by the opportunity of giving premiums to a mercenary and depraved ambition."

An index is appended which may be useful as an aid in finding some points of discussion; but, generally speaking, all a reader needs to do is to turn to the Constitution and find the clause referring to the matter he has in mind: he will then find its discussion in the appropriate place. I have not felt it necessary to make mention of minor discrepancies between the Journal and the Debates of the Convention; nor have I usually cumbered the pages with references to the pages of Elliot's work where the debates under consideration can be found, but have given instead the dates, so that any one can with but little trouble turn to the desired place.

WILLIAM M. MEIGS.

PHILADELPHIA, July, 1899.

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## GENERAL SKETCH.

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*May 25*.—Convention organized.

“ 29.—Virginia resolutions and Charles Pinckney’s draft introduced; both referred to a committee of the whole.

*June 13*.—The committee of the whole report a series of nineteen resolutions upon the nature of the intended government.

“ 15.—New Jersey plan presented, and it and the resolutions already reported referred to a committee of the whole.

“ 19.—The committee report back the resolutions already agreed to as preferable to the New Jersey plan, and the discussion of these resolutions by the Convention proper begins.

*July 24*.—Committee of Detail appointed, consisting of Rutledge, Randolph, Gorham, Ellsworth, and Wilson.

“ 26.—The twenty-three resolutions agreed upon by the Convention referred to the Committee of Detail.

*August 6*.—The Committee of Detail report a draft of the Constitution.

“ 7.—Discussion of this draft begun.

“ 31.—Committee on such parts of the Constitution as had been postponed or had not been acted on appointed, consisting of Gilman, King, Sherman, Bearly, Gouverneur Morris, Dickinson, Carroll, Madison, Williamson, Butler, and Baldwin.

September 8.—Committee on Style and Arrangement appointed, consisting of Johnson, Hamilton, Gouverneur Morris, Madison, and King.  
" 12.—Report from Committee on Style ; discussion of it begins.  
" 15.—Constitution as amended agreed to.  
" 17.—Constitution signed, and Convention adjourns *sine die*.

The Federal Convention was appointed to meet on May 14, but seven States were not represented until May 25, on which day George Washington was unanimously elected President, and William Jackson was elected Secretary by five votes to two for Temple Franklin. The question of how to vote in the Convention had been a subject of discussion before this time, Gouverneur Morris and some others advising that the large States should at the outset unite in insisting that the equality of the States in voting was unreasonable, and should refuse to assent to it. Madison tells us that the members from Virginia conceived that such an attempt might beget fatal altercations, and that it would be easier during their deliberations to prevail upon the small States to give up the equality for an efficient government than to make an issue at the start. They therefore discountenanced the project, and the equality of the States in voting passed *sub silentio*.

On May 29 Randolph opened the main business by a speech of some length, and proposed a series of resolutions, which became in the end the skeleton of the Constitution. These resolutions have been known as the "Virginia plan," and also as the "Randolph plan." Their exact origin is not entirely clear, but is not more involved in doubt than is usual in instances where

many minds have been groping after the attainment of some great purpose. That Madison had for some months been making up his mind on the outlines of the proposed constitution is shown clearly by his letter of March 19, 1787, to Jefferson. Randolph, too, had considered the subject to some extent, and wrote Madison on March 27 \* suggesting the introduction of some "general propositions" into the Convention, and to this Madison replied on April 8 with cordial approval. Madison went on to say that the probability that some leading propositions would be expected from Virginia had led him to consider the subject somewhat closely, and then he outlined his views in a way that shows clearly that he had devoted a great deal of thought to the subject, and he did the same thing again on April 16 in a letter to Washington. And the same authority writes that when the Virginia deputies arrived in Philadelphia, it occurred to them that, owing to the prominent part taken by their State in bringing about the Convention, some initiative step might be expected from them. The resolutions introduced by Governor Randolph were, he goes on, † "the result of a consultation on the subject, with an understanding that they left all the deputies entirely open to the lights of discussion, and free to concur in any alterations or modifications which their reflections and judgments might approve." There is no reason to suppose that the resolutions were in any greater degree the work of Randolph than of any other member of the Virginia delegation; he was doubtless put forward as their spokesman, both from his prominence as governor of

\* Conway's Randolph, p. 71.

† Elliot, v. 121.

Virginia and because he was a gifted orator and ready debater.

Charles Pinckney, of South Carolina, did, in one view, even more than the Virginia delegation, for at the opening of the Convention he introduced a formal and apparently complete draft of a constitution, but this paper has, unfortunately, been lost. What is inserted in the debates as his draft cannot possibly be it: as was long ago pointed out by Madison,\* internal evidence demonstrates this fact, and the demonstration is made absolutely conclusive by the pamphlet † published in 1787, and containing Pinckney's speeches in the Convention on his plan. This speech shows that the plan actually introduced by him was in many particulars radically at variance with the terms of that printed in the debates. The latter is probably some running memorandum kept by him during the course of the debates, based originally on his own plan, but with hosts of interlineations and changes intended to keep before his eyes what the Convention had resolved upon. This was the opinion of Madison, as is shown by his memorandum above referred to, and Pinckney never asserted that its terms were those contained in his plan as actually introduced into the Convention. The printed plan is thus of very little use as evidence of the actual contents of Pinckney's proposed constitution, and I have only used it as such in instances where its provisions *differ* from the determinations of the Convention, and do not differ from the ideas advocated in

\* Elliot, v., Appendix 2, p. 578.

† This rare pamphlet is republished in Moore's American Eloquence, i. 362-70.

his various speeches, as printed in the pamphlet of 1787 and in the debates.

Both Pinckney's plan and the Virginia resolutions were referred to a committee of the whole, and on May 30 that committee began the discussion of the latter, and continued this until June 13, when it reported to the House the resolutions as it had amended and agreed upon them. During their debates every subject was in doubt; great difference of opinion prevailed as to the unity or plurality of the executive and as to the method of his choice, as to the judiciary, and as to the formation of the legislative body. On this last point there were long debates, and it is surprising to see how many members opposed the election of either branch by the people as impracticable and impossible. But the chief contest was over the question of proportional or of State representation. The members from the larger States generally insisted upon representation proportioned to population, while those from the smaller States were quite as insistent that the States as separate entities should be represented, and each have an equal vote. The Convention before very long resolved that the suffrage in the first branch (*i.e.*, the House of Representatives) ought not to be according to the rule established in the Articles of Confederation, but according to some equitable ratio of representation; but soon a new difficulty arose to decide in what way the slaves were to be counted in the representation, and the Convention began to divide on lines which represented respectively the Northern and the Southern interest. On motion of Wilson and Charles Pinckney, it was decided with but little opposition at the moment to add to the above clause a pro-

vision admitting the slaves to a three-fifths' representation, in accordance with an act of Congress agreed to by eleven States for apportioning quotas of revenue. Next, a motion that each State should have an equal vote in the Senate was defeated, and it was resolved that the representation in the second branch should be the same as in the first. This latter vote was carried on June 11, and on the 13th the committee of the whole reported the resolutions it had agreed on with this clause in them.

At this time it is evident that the Convention was in very serious danger of breaking up. Dickinson said to Madison, "You see the consequence of pushing things too far. Some of the members from the small States wish for two branches in the general legislature, and are friends to a good national government; but we would sooner submit to foreign power than submit to be deprived, in both branches of the legislature, of an equality of suffrage, and thereby be thrown under the domination of the larger States." On the 13th, on motion of Paterson, the Convention adjourned to allow "several deputations, particularly that of New Jersey," to digest and report a purely federal plan, and on the 15th Paterson made his report. It had been concerted among the members from Connecticut, New York, New Jersey, Delaware, and Luther Martin; they acted, Madison says,\* on different principles, though to the same end. "The eagerness," he adds, "displayed by the members opposed to a national government, from these different motives, began now to produce serious anxiety for the result of the Convention."

\* Elliot, v. 191.

The resolutions of the committee of the whole and those introduced by Paterson—which have been usually known as the New Jersey plan—were now referred again to the committee of the whole, and on June 16 a general debate was begun on the basis and principles of the two plans. The contest was principally made on the respective first resolutions, the friends of the New Jersey plan showing strong prepossessions against the centralizing tendencies of the Virginia plan, and proposing merely to amend the Articles of Confederation, while the friends of the Virginia plan were determined to adhere in the main to the essentials of their plan, which proposed a government to consist of a supreme legislative, judiciary, and executive. Proposals aiming at a compromise were made, and pending these Hamilton addressed the Convention and proposed a plan outlined in some highly national resolutions. This plan met apparently with little approval, and on June 19 it was moved and carried to postpone the first resolution of Paterson, and then it was resolved that the resolutions theretofore agreed to be reported without alteration.

Thus the Virginia plan became the bed-rock of the Constitution, and the Convention now went to work once more to consider the resolutions embodying it *seriatim*, in the Convention as distinguished from the committee of the whole. In this discussion one of the first things done was to meet, to a certain extent, the objections of those who disapproved the nationalizing tendencies of the Convention by striking out the word “national” and using instead the expression “of the United States,” as, *e.g.*, in the first resolution. All the subjects discussed in committee of the whole were again

considered in the House, and the Convention disagreed so seriously that they were again at several stages very nearly ready to break up. Particularly upon the question of the legislative department their contests were bitter, for here there came once more to the surface the conflict of interest between the smaller and the larger States which had earlier arisen in committee of the whole, the one still insisting on State and the other on proportional representation. As this contest reached a focus and became complicated with the question how the slaves should be counted in fixing the representation, it became evident already at that early day—and members even said this openly on the floor—that the real difference was not between the large and the small States, but between the North and the South. Each section feared that the other would control the Union, and they contested to the very end for their respective sides.

Finally the well-known compromise was agreed upon, but the Convention had been engaged upon the subject from June 27 to July 16, and during all this time very serious doubt of the issue of their labors was repeatedly entertained by them. The whole matter was a subject of compromise between the various conflicting interests, and provisions were injected into it which had no proper place there, and consent to them was undoubtedly extorted as the price by which other portions were carried. Proportional representation was adhered to for the first branch, and then the small States said that they would never agree to unite unless at least in one branch each State was given an equal vote. This had been defeated in committee of the whole, and was at first again lost in the House proper

by an evenly divided vote; but the determined persistence of the members from the small States and the fear of a complete failure of the purpose of the Convention led some members, who were in fact in favor of proportional representation, to consider the advisability of yielding the point as to the second branch. This was finally brought about by a reference to a committee, shortly after the loss by an evenly divided vote of the motion for equal representation in the Senate. They seemed then, as Sherman said, to be at a full stop. But the vote served in reality to bring the dispute to an end, and Madison wrote\* many years later that indications were soon manifest that sundry members from large States were relaxing in their determination, and that some ground of compromise was contemplated such as finally took place.

The compromise which was agreed upon in this committee was based on a motion made by Franklin, but was undoubtedly the work of many minds. It provided for equal representation of the States in the second branch, and this was approved in the Convention on July 7 by a vote of six to three (two divided). The small States had thus at length carried the day as to one branch of the legislature: and, though there was a good deal more discussion, and more references of portions of the compromise to committees, yet this decision was adhered to, and finally the whole series of resolutions into which the subject had grown was approved, on July 16, by five votes to four.

Upon the Executive, also, the Convention differed most widely, and vacillated a good deal in its decisions.

\* Letter to Jared Sparks, printed in Elliot, i. 508.

At one time they threw aside an earlier committee plan for his election by the national legislature, and resolved upon his appointment by electors to be selected by the State legislatures. Then, after having finished and left the Executive, and considered other matters, they reconsidered the whole subject, abolished the choice by electors, and reinstated the plan of the committee of the whole for his election by the national legislature, only, as is well known, to abandon this again still later and insert a modified plan for a choice by electors. The veto of the Executive was also a cause of much difference of opinion, and a strong effort was made once more, as it had been in committee of the whole, to join the judiciary with him in this function. This was a favorite project of Madison, and was introduced by him several times during the Convention's sessions, but was always defeated.

Many other points were discussed at length, and great difference of opinion prevailed, but these can only be considered in the more detailed part of this work. Finally, on July 26, the whole twenty-three resolutions which the Convention had agreed upon were referred to a committee of detail, consisting of five members, to prepare and report a constitution, and Rutledge, Randolph, Gorham, Ellsworth, and Wilson were selected by ballot. To them were also referred the draft of a constitution introduced at the opening of the Convention by Charles Pinckney and the resolutions later introduced by Paterson. Hamilton's resolutions were not referred. The Convention then adjourned until August 6, in order to give this committee time to agree upon a form of constitution.

The Committee of Detail had thus ten days in all

in which to perform its labors. But little remains to show the exact manner in which it worked or who were the more active members, but a paper has been discovered in recent years which I have identified as being undoubtedly a rough draft used in that committee. It is in the handwriting of Randolph, and contains numerous alterations and insertions by Rutledge: and it bears on its face demonstration that it was drawn in pursuance of the twenty-three resolutions which had been referred to the committee on July 26. The student may undoubtedly find in this draft, which is reproduced in fac-simile in this work, a rough sketch with the aid of which (and of course of much other matter which has been lost) the Committee of Detail agreed upon the first formed draft of a constitution, which they reported to the Convention on August 6.

On that day the Convention began to go over this draft of a constitution clause by clause, and was engaged in this work until September 10. Numerous contests arose, and there was vast difference of opinion on many subjects. As time wore on and members grew weary, more and more subjects were referred to committees, and from these bodies came several of the provisions of the Constitution. They finally appointed a committee on postponed and unfinished parts of the Constitution, and it is to this body that seem to be mainly due the provisions as to the method of electing the President, as well as other matters. It is not possible here to review the windings which had to be gone through by the Convention in all this process, as they passed from one subject to another, occasionally transferred a matter from one part of the instrument some-

where else, postponed things in order to get rid of them or in the hope that some subject more or less connected with the one in hand would be so settled as to clear the way for them, and generally behaved themselves like weak human beings.

Some few of the members strike me as weak, petulant, difficult, striving to make a record and to keep themselves right with the public; while others were most earnest at the work in hand and ever ready to advise and aid in perfecting the instrument they were called upon to frame. Some of these latter were as much and as often defeated as any one, but they stayed on, and worked admirably and patiently to the end they had in view. Madison, Wilson, Sherman, Ellsworth, Gouverneur Morris, Dickinson, Charles Pinckney, Rutledge, King, Gorham, were all of immense usefulness, and so was Randolph in some particulars. Morris was plainly a great draughtsman, and often bettered enormously the form of other members' suggestions; he was not infrequently so successful that the Convention and even the member who had introduced a proposal would at once accept his modification. What impresses me most as to Madison is how profoundly he felt the necessity of creating a strong government. Probably the most surprising thing of all is how small was the majority believing in letting the people have any considerable part in the election of the government.

On September 8, when the Convention had about finished this review of the draft presented by the Committee of Detail, they appointed by ballot a committee of five to revise the style of and arrange the articles agreed to, and Johnson, Hamilton, Gouverneur Morris,

Madison, and King were selected. They did not complete their work until September 12, but on that day reported a revised draft upon nearly all the matter referred to them. It had reached their hands already in the shape of a constitution, and no longer a mere set of resolutions such as had been earlier referred to the Committee of Detail to draft a constitution ; but still their work was immense, for the instrument was still very involved, with many clauses piled in one after the other, sadly out of place, and with but little of that orderly arrangement which such an instrument should have. They transposed clauses very largely, bringing them scientifically under appropriate heads, and changed the style of the instrument to its present shape, in which the good English and the *lucidus ordo* are in such a high degree conspicuous.

It is well known that Gouverneur Morris did this work \* for the committee ; his skill as a draughtsman was recognized, and the members of the committee were doubtless glad to leave it to such able hands. It has been often charged that he took advantage of his position to insert turns of phrase and language tending to the establishment of a centralized government such as he believed in, and there is doubtless some foundation for the charge ; but it may be doubted whether he did more in this way than most men would do in the like position.

When this report from the Committee on Style reached the Convention on September 12, they went

\* Letter of Gouverneur Morris in Sparks's *Gouverneur Morris*, iii. 323, and Elliot, i. 506-7 ; Letter of Madison in Elliot, i. 507-8.

over the instrument once more, and quite a number of minor amendments were made. One then thought of substance was that in regard to the proportion of representation, changing it so as to authorize one representative for every thirty thousand people. Washington thought this so important that, when putting the question, he for the first time during the sittings of the Convention addressed the body and urged the passage of the amendment. It was then immediately approved without objection.

One other amendment, which still remains of substance, was also made at this time, and that was the insertion in the amendment clause of the proviso that no State should without its consent be deprived of its equal suffrage in the Senate. Sherman first suggested this, but his motion was defeated by a large majority. He then moved to strike out the whole amendment clause, and this was also lost, whereupon murmurs among the smaller States began to circulate to such an extent that Gouverneur Morris renewed the important part of Sherman's motion, and it was at once approved without the dissent of any one in the form now contained in the Constitution.

Finally, when the whole instrument had been again gone over and been agreed to by all the States present and had been ordered to be engrossed, Gouverneur Morris devised the attestation clause in its existing form, with a view to avoiding the scruples of those who were unwilling to append their names to the Constitution, as it might seem to be giving it their approval; he proposed that they should sign after the words "done in convention by the unanimous consent of the States present," etc., and the argument was that this

was not an approval by the members of the Constitution itself, but was merely an attestation of the undoubted fact that the instrument had received the approval of each State present. Morris had this plan introduced by Franklin, in order to increase the chances of its success, but it did not win over Randolph or Mason or Gerry, who were probably largely in view when it was devised, and some members disapproved of it as equivocal and uncandid. It was, however, carried, and the members then proceeded to sign the Constitution under this attesting clause. The only members present who refused to sign were Mason, Randolph, and Gerry, and the members who did sign represented twelve different States.



THE  
GROWTH OF THE CONSTITUTION.

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PREAMBLE.

WE THE PEOPLE of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this CONSTITUTION for the United States of America.

Strictly speaking, the preamble originated only in the Committee of Detail, but the earlier discussions in regard to the purpose and nature of the intended government seem also to have had some influence on it. These discussions, moreover, cannot so well be assigned to any other portion of the final instrument, and they are consequently reviewed here. The first resolution of the Virginia plan was as follows:—

“*Resolved*, that the Articles of Confederation ought to be so corrected and enlarged as to accomplish the objects proposed by their institution; namely, ‘common defence, security of liberty, and general welfare.’”

On May 30, on Gouverneur Morris’s suggestion, Randolph moved to substitute the following for this resolution:—

“1. That a union of the states merely federal will not accomplish the objects proposed by the Articles of Confederation—namely, common defence, security of liberty, and general welfare.

"2. That no treaty or treaties among the whole or part of the states, as individual sovereignties, would be sufficient.

"3. That a *national* government ought to be established, consisting of a *supreme* legislative, executive, and judiciary."

The third resolution of this substitute was on motion taken up alone, and there was some discussion of its meaning. Read moved to postpone it for the following:—

"*Resolved*, that in order to carry into execution the design of the states in forming this Convention, and to accomplish the objects proposed by the Confederation, a more effective government, consisting of a legislative, executive, and judiciary, ought to be established."

The committee voted against this proposed amendment and in favor of the third resolution in the substitute offered by Randolph, and after this date went on with the consideration of the other resolutions of the Virginia plan, and on June 13 reported to the Convention the nineteen resolutions which it had agreed upon as embodying the outline of their idea of the intended government. As has been seen, the first of these resolutions provided for the establishment of "a national government . . . consisting of a supreme legislative, judiciary, and executive." Other clauses also contained language which some members deprecated strongly as indicating too great a departure from a federal system, while the language used by many members during the debates indicated the same tendency possibly more strongly. Some delegates, especially from the smaller States, were much alarmed at this as well as at the evident and declared intention of the majority of the Convention to establish repre-

sentation in the two houses of Congress based on population. These delegates were determined to preserve at least some portion of the equality of the States, and were strongly opposed to so great a departure from the Articles of Confederation as was intended.

In consequence of all this, Paterson, of New Jersey, announced on June 14, the day after the report from the committee of the whole, that it was the wish of several deputations, particularly of that from his State, to prepare a purely federal plan, and asked time for this purpose. The next day he submitted this plan, which had been drafted\* by members from Connecticut, New York, New Jersey, and Delaware, and Luther Martin, of Maryland. It was comprised in nine resolutions, and the general drift of it was outlined in the first resolution, that "the Articles of Confederation ought to be so revised, corrected and enlarged, as to render the federal Constitution adequate to the exigencies of government, and the preservation of the Union."

The Paterson or New Jersey plan being referred to a committee of the whole and the Randolph plan recommitted, the members entered upon an extended debate as to the merits of the two plans and the form of government desirable for the country. In this discussion many members took part, the widest differences of opinion were expressed, and considerable temper was displayed. Randolph urged that what was wanted was *national legislation over individuals*. Hamilton spoke for the first time, and introduced a series of eleven resolutions outlining a highly national government.

\* Luther Martin's Letter, Elliot, i. 349.

Madison argued generally in favor of the Virginia plan, and drew illustrations from the history of the Amphictyonic and Achæan as well as the Helvetic, Germanic, and Belgic confederacies. He urged that the New Jersey plan would not prevent those violations of treaties and of the law of nations which the States had been guilty of in so many instances, and in regard to which "the files of Congress," he said,\* "contain complaints, already, from almost every nation with which treaties have been formed."

On June 18 Dickinson moved to substitute the following for the first resolution of the New Jersey plan : — "That the Articles of Confederation ought to be revised and amended, so as to render the government of the United States adequate to the exigencies, the preservation, and the prosperity of the Union." But this was defeated † by six noes to four ayes on June 19, and on the same day it was first voted to postpone the first resolution of the New Jersey plan, New York and New Jersey only voting no; and then, on motion of King, it was carried by seven States to three (New York, New Jersey, and Delaware) that the committee of the whole rise and report that they do not agree to the propositions of Paterson, and that they report again the resolutions offered by Randolph heretofore reported.

The Convention then proceeded to the consideration of the resolutions so reported by the committee of the whole, and took up the first resolution ; and it was at once evident that the advocates of a strong central government, having carried their main point, were ready

\* Elliot, v. 207.

† Ibid., v. 198 : 206.

to yield to the other side to some extent. Accordingly, on June 20, a motion of Ellsworth and Gorham to drop the word “national” and insert “of the United States” was at once agreed to *nem. con.*, so that the clause read that “the government of the United States ought to consist,” etc.: and a similar change was made as of course in the second resolution.

The Convention then went on with the other resolutions, referred them all later to the Committee of Detail, and on July 26 adjourned to August 6, in order to give that committee time to prepare a draft of a constitution. But little is known of how the committee worked at their task, but the Randolph draft shows that, after some very general observations, he wrote:—“A preamble seems proper. Not for the purpose of designating the ends of government and human politics. This display of theory, howsoever proper for the first formation of State governments, is unfit here, since we are not working on the natural rights of men not yet gathered into society, but upon those rights modified by society and interwoven with what we call the rights of States. Nor yet is it proper for the purpose of mutually pledging the faith of the parties for the observance of the articles. This may be done more solemnly at the close of the draught, as in the Confederation. But the object of our preamble ought to be briefly to declare that the present federal government is insufficient to the general happiness; that the conviction of this fact gave birth to this Convention; and that the only effectual mode which they can devise for curing this insufficiency is the establishment of a supreme legislative, executive, and judiciary. Let it be next declared that the following are the Constitu-

tion and fundamentals of government for the United States.”

The steps by which the preamble grew from these suggestions are not known, but on August 6 the Committee of Detail reported a draft of a Constitution beginning as follows:—

“We, the people of the states of New Hampshire, Massachusetts, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, do ordain, declare, and establish, the following Constitution for the government of ourselves and our posterity:—

“ARTICLE I. The style of this government shall be ‘The United States of America.’

“ARTICLE II. The government shall consist of supreme legislative, executive, and judicial powers.”

This preamble and these two articles were agreed to *nem. con.* on August 7, and were later referred, in the same form, to the Committee on Style. That committee reported the preamble on September 12 as shortly below. They had omitted the names of the separate States, as was absolutely necessary, since the Constitution provided in the seventh article that it should go into effect upon the ratifications of nine States as a Constitution for the said nine States. They had also inserted a statement as to the purposes aimed at in establishing the Constitution, and they had omitted entirely Articles I. and II. above:—

“We, the people of the United States, in order to form a more perfect union, to establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.”

On September 13, during the comparison by the Convention of the report of the Committee on Style with the articles agreed on, the word "to" before "establish justice" was struck out.\*

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## ARTICLE I., SECTION 1.

### ARTICLE I., SECTION 4, CLAUSE 2.

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

\* \* \* \* \*

The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

The third of the Virginia resolutions read:—"Resolved, that the national legislature ought to consist of two branches," and this was agreed to on May 31, and later reported from the committee of the whole. On June 20, during the discussion in the Convention proper, Lansing and Sherman moved to make it read, "Resolved, That the powers of legislation be vested in the United States in Congress." The purpose of this motion was to adhere more closely to the existing Confederation, and it was offered soon after the Convention had rejected the New Jersey plan, and decided to adhere to that proposed by the Virginia delegates. Quite a debate was then had upon the general principles of the two plans, and Lansing's motion was defeated. The word "national" having been struck out

\* Elliot, i., 308.

as of course in accordance with the prior vote on the first resolution, the clause was adopted \* in the following form by the votes of seven States to three :—“*Resolved*, That the legislature ought to consist of two branches.”

This resolution went accordingly to the Committee of Detail, and in carrying it out Randolph wrote in his committee draft, “The Legislative shall consist of two branches, viz.: (a) a house of delegates, and (b) a senate, which together shall be called ‘the legislature of the United States of America.’” The clause reported by the committee in the draft of August 6 was as follows :—

“ARTICLE III. The legislative power shall be vested in a Congress, to consist of two separate and distinct bodies of men, a House of Representatives and a Senate; each of which shall in all cases have a negative on the other. The legislature shall meet on the first Monday in December in every year.”

When this clause came before the Convention, on August 7, there was some discussion upon the provision as to the Houses having a negative on one another, and the words were finally struck out upon the ground that the right was sufficiently clear without them. The time of meeting was also discussed, some objecting to fixing it at all in the Constitution and some preferring to fix May. Randolph moved to insert the words “unless a different day shall be appointed by law,” and Rutledge thought there should be a requirement for a meeting “once at least in every year.” These proposals were approved, and the clause as amended was then approved † *nem. con.* as follows :—

\* Elliot, v. 214–23.

† Ibid., v. 382–85.

"The legislative power shall be vested in a Congress, to consist of two separate and distinct bodies of men, a House of Representatives and a Senate. The legislature shall meet at least once in every year; and such meeting shall be on the first Monday in December, unless a different day shall be appointed by law."

The Committee on Style changed both the language and arrangement of this clause in several minor particulars, and reported its gist as Article I., Section 1, and Article I., Section 4, Clause 2, as follows:—

"ARTICLE I., SECTION 1. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

"SECTION 4. . . . The Congress shall assemble at least once in every year; and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day."

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## ARTICLE I., SECTION 2, CLAUSES 1 AND 2.

The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the Age of twenty-five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

The fourth resolution of the Virginia plan was as follows:—

*"Resolved,* that the members of the first branch of the national legislature ought to be elected by the people of the several states, every                    for the term of               ; to be of the age of              years at least; to receive liberal stipends, by which they may be compensated for the devotion of their time to the public service; to be ineligible to any office established by a particular state, or under the authority of the United States, except those peculiarly belonging to the functions of the first branch, during the term of service, and for the space of                    after its expiration; to be incapable of reëlection for the space of              after the expiration of their term of service, and to be subject to recall."

The first clause, "that the members of the first branch of the national legislature ought to be elected by the people of the several states," being taken up on May 31, Sherman and Gerry opposed the election by the people, and Butler thought it an impracticable mode, while Mason, Wilson, and Madison advocated it, the first named saying that it was to be the grand depository of the democratic principle of government,—so to speak, "our House of Commons." This part of the resolution was agreed to on May 31, and the balance postponed as entering too much into detail for general propositions.

On June 6, according to previous notice, Charles Pinckney moved "that the first branch be elected by the State legislatures and not by the people," and there was again quite a debate upon the subject. Rutledge, Sherman, and Charles Cotesworth Pinckney supported the motion, while Wilson, Mason, Madison, Dickinson, and Pierce were against it. Gerry thought the people should nominate certain persons in certain districts, and that the legislatures should make the appointment. Dickinson and Pierce thought it essential that one

branch should be appointed by the people. The motion was defeated by eight noes to three ayes.

On June 12 the blank for the term of members of the first branch was filled with "three," after "one" and "two" had been also suggested. Madison thought that three years would be by no means too long a term, while Gerry insisted that the people of New England would never give up annual elections. Next the words "to be of        years at least" were struck out, and further alterations were made of the remaining parts of the resolution; but these go to other parts of the Constitution and do not concern us here. The only portions having reference to the clauses of the Constitution now under consideration were therefore reported by the committee of the whole in the following form:—"That the members of the first branch of the national legislature ought to be elected by the people of the several States for the term of three years." This was considered by the House proper on June 21, and an effort was again made to do away with the election by the people, and to choose the members more or less with the aid of the legislatures. Charles Cotesworth Pinckney moved that the members "should be elected in such manner as the legislature of each State should direct," and there was some debate upon the motion, but it was defeated, and the Convention adhered by nine votes to one to the election by the people.

Another amendment made at this stage inserted the two-year term,\* and, on motion of Mason, the clause was also amended † to require members "to be of the age of twenty-five years at least."

\* Elliot, v. 224-26.

† Ibid., v. 228-29.

The portions of the clause which have reference to the part of the Constitution now under consideration were therefore referred to the Committee of Detail in the following form:—

“III. *Resolved*, That the members of the first branch of the legislature ought to be elected by the people of the several states for the term of two years: . . . to be of the age of twenty-five years at least . . .”

There was also referred to them (see “Defeated Proposals: Qualifications of Officers”) a clause directing them to receive clauses requiring certain qualifications of property and citizenship for the executive, the judiciary, and the members of both branches of the legislature.

Randolph’s committee draft was in the main merely a carrying out of the provisions contained in the resolution referred to the Committee of Detail, but as to the qualifications of delegates he wrote at one time a query on the margin “if a certain term of residence, and a certain quantity of landed property ought not to be made by the Convention further qualifications.” This was, however, later cancelled. He wrote also at one time a provision that “the qualifications of electors shall be the same throughout the States, viz.:—citizenship manhood, sanity of mind, previous residence for one year, or possession of real property within the State for the whole of one year, or enrolment in the militia for the whole of a year.” He later, however, cancelled all of these qualifications, unless the two first, as “not justified by the resolutions,” and changed the rest of the provision to read, “the qualifications of electors shall be the same with that in the particular States,

unless the legislature shall hereafter direct some uniform qualification to prevail through the States."

The Committee of Detail reported as follows:—

"ARTICLE IV., SECTION 1. The members of the House of Representatives shall be chosen every second year, by the people of the several states comprehended within this Union. The qualifications of the electors shall be the same, from time to time, as those of the electors in the several states, of the most numerous branch of their own legislatures.

"SECTION 2. Every member of the House of Representatives shall be of the age of twenty-five years at least; shall have been a citizen in the United States for at least three years before his election; and shall be, at the time of his election, a resident of the state in which he shall be chosen."

When this subject came up before the Convention on August 7, Gouverneur Morris moved to amend the first section by striking out that portion relating to the qualifications of electors with the view of inserting a provision to confine the suffrage to freeholders, but after some discussion the motion was lost. Gouverneur Morris and Dickinson supported it on the ground that it would keep out the dangerous influence of multitudes; while Williamson, Wilson, Ellsworth, Mason, Butler, and Franklin opposed it on the ground that it was a subject on which the people were jealous, and it would not be well to excite their jealousies by depriving some of them of the vote as to federal officers when the same citizens have the right to vote in the States. Franklin urged the importance of maintaining the public spirit of the common people. The second section was amended, on the motion of Mason, by inserting "seven" instead of "three" in the requirement of citizenship of the United States, and was also amended in

some verbal matters, and the two clauses left to read as follows:—\*

“ARTICLE IV., SECTION 1. The members of the House of Representatives shall be chosen every second year, by the people of the several states comprehended within the Union. The qualifications of the electors shall be the same, from time to time, as those of the electors in the several states, of the most numerous branch of their own legislatures.

“SECTION 2. Every member of the House of Representatives shall be of the age of twenty-five years at least; shall have been a citizen of the United States for at least seven years before his election; and shall be, at the time of his election, an inhabitant of the state in which he shall be chosen.”

On August 13 the Convention reconsidered the second section above, and Wilson and Randolph moved to insert “four” instead of “seven” as the requirement of citizenship, and there was quite a debate as to the advisability of admitting foreigners. Madison and Hamilton urged the importance of their easy admission, but Gerry, Williamson, Butler, Rutledge, Sherman, and Charles Pinckney were all against it. Wilson’s motion for four years was lost, as were also motions for five and for nine years. A motion of Gouverneur Morris to add to the clause a proviso that the limitation of seven years should not affect the rights of any one now a citizen was also lost by six noes to five ayes, and the article was then agreed to † *nem. con.*

There had been some debate in the Convention on August 9 on the question of fixing the period of citizenship to be required of Senators (see Article I., Section 3, Clauses 1–3), and members had differed widely. Some were in favor of a period as short as

\* Elliot, v. 385–91.

† Ibid., v. 411–14.

four years, while others advocated fourteen, and were strongly opposed to the easy admission of foreigners. In this discussion Wilson had spoken of the curious position he might be put in, of aiding to draw a constitution and yet being incapable of holding office under it.

These clauses were later referred to the Committee on Style, and they reported them, with minor alterations, as follows:—

“**SECTION 2.** The House of Representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

“No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.”

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### ARTICLE I., SECTION 2, CLAUSE 3.

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of Free persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode Island and Providence Plan-

tations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

The second resolution of the Virginia plan was as follows:—

*“Resolved*, therefore, that the rights of suffrage in the national legislature ought to be proportioned to the quotas of contribution, or to the number of free inhabitants, as the one or the other rule may seem best in different cases.”

When this resolution was considered on May 30, various modifications were suggested, as quoted below, but the whole subject was postponed on Read's reminding the committee that the deputies from Delaware were restrained by their commission from assenting to any change of the rule of suffrage:—

“That the rights of suffrage in the national legislature ought to be proportioned to the number of free inhabitants.”

“That the rights of suffrage in the national legislature ought to be proportioned and not according to the present system.”

“That the rights of suffrage in the national legislature ought not to be according to the present system.”

“That the equality of suffrage established by the Articles of Confederation ought not to prevail in the national legislature; and that an equitable ratio of representation ought to be substituted.”

Long before any vote was taken upon the question of representation the smaller States knew that the larger ones meant to deprive them of their equality of representation, and they were determined to contend bitterly against this. Bedford referred\* to the evident intention of the large States on June 8, and on the

\* Elliot, v. 173.

same day Charles Pinckney and Rutledge moved an amendment to the fourth resolution, looking to proportional representation in the first branch of the national legislature. Their motion was that the States be divided into three classes, in accordance with their "comparative importance," and that the first class should have three members, the second two, and the third one. For some days prior to this other subjects had been under consideration, but on June 9 Paterson moved that the committee resume the clause relating to the right of suffrage in the national legislature. Bearly seconded him, but regretted that the question was raised. He urged that proportional representation would destroy the smaller States, and that the consequence would be that Massachusetts, Pennsylvania, and Virginia would carry everything before them. He expressed himself as astonished and alarmed at the proposal. He could not say, on the other hand, that it was fair that Georgia should have an equal vote with Virginia, and thought there was only one remedy for this, and that was to erase the existing boundaries and make a new partition of the whole country into thirteen equal parts. Paterson was also strongly opposed to proportional representation, and ended by saying that he would rather submit to a monarch or a despot than to confederate on such a plan. Wilson answered that if the small States would not confederate on this plan, the large ones would not confederate on any other, and expressed the hope that, if the confederacy should be dissolved, the majority, or even a minority, of the States would unite for their safety.

The debate was continued on June 11, and at the opening of the session on that day Sherman made the

important suggestion that “the proportion of suffrage in the first branch should be according to the respective numbers of free inhabitants, and that in the second branch, or Senate, each state should have one vote, and no more.” He did not then make any motion to this effect, but his argument was that, as the States would remain possessed of certain individual rights, each one ought to be able to protect itself, or a few large States would rule the rest. Rutledge next proposed that the proportion of suffrage in the first branch should be according to the quotas of contribution, but he, also, made no motion, and King and Wilson then moved, in order to bring the question to a point, that “the right of suffrage in the first branch of the national legislature ought not to be according to the rule established in the Articles of Confederation, but according to some equitable ratio of representation,” and this was carried by seven ayes to three noes, after but little more debate and after Franklin had interposed with a temperate speech intended to quiet the evident excitement of members and to stop the threatening deadlock.

Rutledge next moved \* to add to the above “equitable ratio of representation” the words “according to the quotas of contribution,” but this was postponed so as to add instead, on motion of Wilson and Charles Pinckney, the words “in proportion to the whole number of white and other free citizens, and inhabitants of every age, sex, and condition, including those bound to servitude for a term of years, and three-fifths of all other persons not comprehended in the foregoing

\* Elliot, v. 181.

description, except Indians not paying taxes, in each state." This was taken from the rule in the act of Congress, agreed to by eleven States, for apportioning quotas of revenue, and it was carried by nine votes to two, after a word of objection by Gerry, who thought that blacks in the South should no more be counted than cattle in the North.

It has been already said that, early on June 11, Sherman had proposed that the proportion of suffrage in the first branch should be according to the respective numbers of free inhabitants, and that in the second branch, or Senate, each State should have one vote. He did not then make any motion to this effect, but later in the same day, after the Convention had passed the resolutions just detailed in favor of proportional representation in the first branch, he and Ellsworth moved that a question be taken whether in the second branch of the national legislature each State have a vote, but the proposition was lost by five to six. And then Wilson and Hamilton moved the following:—"That the right of suffrage in the second branch of the national Legislature ought to be according to the rule established for the first," and this was carried by the same six to five.\*

The second resolution of the Virginia plan had now been altered in committee of the whole so as to read as follows:—

"7. *Resolved*, That the rights of suffrage in the first branch of the national legislature ought not to be according to the rule established in the Articles of Confederation, but according to some equitable ratio of representation; namely, in proportion to the whole number of white and other free citizens and in-

\* Elliot, v. 178, 181, 182.

habitants of every age, sex, and condition, including those bound to servitude for a term of years, and three-fifths of all other persons, not comprehended in the foregoing description, except Indians not paying taxes in each state.

"8. *Resolved*, That the right of suffrage in the second branch of the national legislature ought to be according to the rule established for the first."

In this form these resolutions were reported from the committee to the Convention on June 13, after they had gone over all the Virginia resolutions and developed them into nineteen general propositions. A few days later Paterson introduced into the Convention what has been generally known as the New Jersey plan, having in view a purely federal government; but the committee of the whole, to which this was referred, disapproved it, and, on June 19, reported their preference for the resolutions already agreed upon, after some considerable discussion of the desirability of a national or purely federal system.

During these debates, as well as those following for a few days afterwards, it appeared several times very plainly that the matter uppermost in the minds of many members was the vital question of the basis of representation, and some motions were made to take it up and postpone the matter in hand. Finally, on June 27, a motion to this effect was agreed to, and the Convention took up the seventh and eighth resolutions above quoted, and entered at once on what turned out to be its hardest-fought battle. Approximately one-half of the States—mainly the smaller ones—contended strenuously that the States only should be represented in both branches of Congress, while the other half contended as earnestly for a representation in both

branches proportionate to population. The intricacies of this contest will be difficult to follow. It came very near to breaking up the Convention, and a vast deal of bad blood was generated. As the contest went on, the compromise finally adopted unfolded itself step by step by dint of references to committees and re-references: and it is also worthy of note that the members began to see that the real contest in their body was not so much between the small States and the large as between the Southern States and the Northern.

The debate was started on a motion to agree to the first part of the seventh resolution, declaring that the suffrage in the first branch ought not to be according to the rule established in the Articles of Confederation, but according to some equitable ratio of representation: and Luther Martin then made his well-known, long, two-days' speech. Another motion was made to strike out the word "not," and the already-suggested plan of a new partition among the States of the total territory of the country (with a view to equalizing the States) was again referred to. Near the end of the second day's discussion Franklin spoke, and, referring to the great differences in the body and the little progress made in four or five weeks, proposed that they should open the daily session with prayer, but the proposal did not reach a vote. The next morning (June 29) Johnson opened the session in a short speech in which he proposed, as a basis of compromise, that, as the States are to continue to exist, and ought to be provided with some power of self-defence, the *people* should be represented in *one* branch and the *States* in the *other*. The discussion continued some time longer, however, and the speeches showed the earnestness and anxiety of the

members. Gorham, Ellsworth, Read, Madison, Hamilton, and others took a part. The first vote taken was on the motion to strike out the word "not," and it was lost\* by four to six; and then the motion was carried, by six to four, to agree to the clause as reported:—

"*Resolved*, That the rights of suffrage in the first branch of the legislature of the United States ought not to be according to the rule established in the Articles of Confederation, but according to some equitable ratio of representation."

It was then at once moved to postpone the balance of the seventh resolution, and take up the eighth, and this was carried by nine to two. Ellsworth next moved to amend the eighth resolution so as to read:—"That in the second branch of the legislature of the United States each state shall have an equal vote." He expressed his satisfaction with the vote just taken, and hoped that it might become a ground of compromise with regard to the second branch; but the debate, which continued for the balance of that day and the whole of the next, still showed much heat. The members from the smaller States would not yield an inch, and matters grew so serious that Wilson suggested the possibility of allowing one Senator for each one hundred thousand of population, with a provision that each State should have one member at least. Franklin suggested to compose the Senate of the same number of members from each State, but that in certain cases each State's delegation should only have a vote in proportion to the sums their State should contribute to the treasury. Madison was willing to consent to the suggestion of Wilson on condition that a due independence

\* Elliot, v. 259.

should be given to the Senate and it should not be made merely a second edition of Congress: he knew the faults of Congress too well, he said. Bedford contended still that there was no middle way, and threw out that in the event of the failure of agreement, the large States would not dare to dissolve the Confederation, and if they did, some foreign power would take the smaller States by the hand. On July 2 the motion came to a vote, and was lost by an even vote.

This left them, as Sherman said, at a full stop; and they were probably nearer to breaking up on this day than at any time. Charles Pinckney proposed as a compromise that the States be divided into classes, with an apportionment of Senators among them; and Charles Cotesworth Pinckney to some extent approved the suggestion, but preferred the plan of Franklin mentioned shortly above. He ended by proposing that a committee be appointed to devise and report some compromise, and, after some discussion, this plan was carried, and a committee of one member from each State was appointed by ballot. Gerry, Ellsworth, Yates, Patterson, Franklin, Bedford, Martin, Mason, Davy, Rutledge, and Baldwin were appointed.

Madison wrote,\* many years later, that at about this time indications were manifest that sundry members from large States were relaxing in their determination, and that some ground of compromise was already contemplated such as finally took place. The committee held its sessions between July 2 and 5. Sherman, who attended its meetings in place of Ellsworth, who was sick, proposed that they should report to the fol-

\* Letter to Jared Sparks printed in Elliot, i. 508.

lowing effect :—“ That each state should have an equal vote in the second branch, provided that no decision therein should prevail unless the majority of States concurring should also comprise a majority of the inhabitants of the United States.” This proposal was based on a similar proposal made in the debates on the Articles of Confederation. Finally Franklin made the proposal which was reported. It was barely acquiesced in by the States opposed to an equality in the second branch, and was considered by those who supported this equality as a gaining of their point. The report from the committee\* was as follows :—

“ That the subsequent propositions be recommended to the Convention on condition that both shall be generally adopted.

“ 1. That, in the first branch of the legislature, each of the states now in the Union shall be allowed one member for every forty thousand inhabitants, of the description reported in the seventh resolution of the Committee of the whole House: that each state not containing that number shall be allowed one member: that all bills for raising or appropriating money, and for fixing the salaries of the officers of the government of the United States, shall originate in the first branch of the legislature, and shall not be altered or amended by the second branch: and that no money shall be drawn from the public treasury but in pursuance of appropriations to be originated in the first branch.

“ 2. That, in the second branch, each state shall have an equal vote.”

This proposal met with a good deal of opposition, and members were still strenuous in maintaining their respective views. Gouverneur Morris said that the country was certainly destined to be in some way united, and that if persuasion does not unite it, the sword will. A proposition was made by Rutledge to fix the suffrages

\* Elliot, v. 274.

by the sums the inhabitants of each State pay towards the general revenue, and that an apportionment should be made every few years, the number at present for each State to be now fixed. This was lost, but the next day (July 6) Gouverneur Morris moved to commit so much of the report as fixed one member for every forty thousand inhabitants, with the view that the committee might now fix the numbers for the first legislature, and that the legislature might be authorized to make changes hereafter. After some short debate the motion was carried, and Gouverneur Morris, Gorham, Randolph, Rutledge, and King were appointed by ballot. The House then, after considerable discussion and some contrary decisions, voted to approve the second portion of the first clause of the first committee's report in regard to the origin of bills for raising money and so forth.

The members from the small States maintained that the provision as to money bills was a material concession on their part, as such bills were put so completely in the control of the body based on proportional suffrage. Madison writes \* that Mason, Gerry, and some other members from large States set great store by this provision, and the members from the small States and some others who wanted a strong government availed themselves of this predilection to secure provisions favoring the small States and in favor of a strong government. Some members from large States denied that it was any concession at all, and some objected to it in any event as being merely a following of English precedent without reason.

\* Elliot, v. 514.

Finally, on July 7, the House approved by six to three (two divided) of the second clause giving an equal vote to each State in the second branch. This was a great victory for the smaller States, but Madison intimates\* that several delegations were influenced by the fact that another vote was to be taken upon the whole report. Soon afterwards they resolved to postpone the balance of the report from the committee of a member from each State until the last-appointed committee of five should report. This committee brought in a report on July 9 as follows:—

“That, in the first meeting of the legislature, the first branch thereof consist of fifty-six members, of which number

New Hampshire shall have . . . 2	Delaware shall have . . . . 1
Massachusetts shall have . . . 7	Maryland shall have . . . . 4
Rhode Island shall have . . . 1	Virginia shall have . . . . 9
Connecticut shall have . . . 4	North Carolina shall have . . 5
New York shall have . . . 5	South Carolina shall have . . 5
New Jersey shall have . . . 3	Georgia shall have . . . . 2
Pennsylvania shall have . . . 8	

“But, as the present situation of the states may probably alter, as well in point of wealth as in the number of their inhabitants,—that the legislature be authorized from time to time to augment the number of representatives. And in case any of the states shall hereafter be divided, or any two or more states united, or any new states created within the limits of the United States, the legislature shall possess authority to regulate the number of representatives, in any of the foregoing cases, upon the principles of their wealth and number of inhabitants.”

The second section of this report was soon agreed to with little opposition, but the first section excited a great deal of criticism, members wanting to know on what principle it was based and objecting that it did not appear to correspond with any rule on which Congress

\* Elliot, v. 286.

had theretofore acted. It was soon moved to refer the first clause to a committee of a member from each State. Gouverneur Morris, who had been chairman of the committee of five, seconded this motion, and added that the report was little more than a guess, intended to bring the subject to the consideration of the House; wealth, he said, had been to some extent considered by the committee. The motion was carried, and a committee appointed by ballot, consisting of King, Sherman, Yates, Brearly, Gouverneur Morris, Read, Carroll, Madison, Williamson, Rutledge, and Houston. They reported the next day (July 10) the following:—

“That in the original formation of the legislature of the United States, the first branch thereof shall consist of sixty-five members, of which number

New Hampshire shall send . . . 3	Delaware shall send . . . . . 1
Massachusetts shall send . . . 8	Maryland shall send . . . . . 6
Rhode Island shall send . . . 1	Virginia shall send . . . . . 10
Connecticut shall send . . . . 5	North Carolina shall send . . 5
New York shall send . . . . 6	South Carolina shall send . . 5
New Jersey shall send . . . . 4	Georgia shall send . . . . . 3”
Pennsylvania shall send . . . 8	

Several members were dissatisfied with the ratio allowed their respective States, and motions were made to increase or decrease the delegations of different States, but they were all defeated and the report approved. It again came out in this discussion, and King admitted that this had guided him in the committee, that the real line of separation was not between the small and large States, but between the Southern and Eastern. Gouverneur Morris soon recognized\* the truth of this view, and Madison said † that one of the objections against the equality of votes in the sec-

\* Elliot, v. 308.

† Ibid., v. 314, 315.

ond branch was that it would give the preponderance to the Northern States over the Southern. "It seemed now to be pretty well understood," he added, "that the real difference of interest lay not between the large and small, but between the Northern and Southern, States. The institution of slavery and its consequences formed the line of discrimination. There were five States on the southern, eight on the northern side of this line. Should a proportional representation take place, it was true, the Northern would still outnumber the other, but not in the same degree, at this time, and every day would tend towards an equilibrium."

Many and very conflicting motions were made on July 11 and 12 in regard to a census on which to base representation in the future. Some wanted wealth largely considered in the estimate, and again there was an effort on the part of several members to provide that the expected Western States should not have equal representation, but only such as the older States should hereafter choose to grant to them. Gouverneur Morris\* was a strong advocate of this, while Mason and Madison urged its impolicy. The Convention even resolved upon a plan for a census in piecemeal, which was pretty complete, but excluded the three-fifths slave representation, and then they unanimously defeated it as a whole.† The next day (July 12) Gouverneur Morris moved to add a proviso to the second clause reported from the committee of five in regard to the legislature's varying the number of representatives from time to time that "taxation shall be in

\* See, *e.g.*, Elliot, v. 279, 294, 298, 491-93. For Mason and Madison's view see, *e.g.*, *ibid.*, 295, 299.

† *Ibid.*, v. 293-302.

proportion to representation ;” \* but Mason feared that embarrassments might be occasioned by it to the legislature and that it might drive them to the plan of requisitions. Others seem to have suggested the difficulty of applying it to taxes on imports and exports and consumption. Morris then amended it so as to read “ provided always that direct taxation ought to be proportioned to representation,” and in this form it was soon agreed to *nem. con.* On July 12 there was again some discussion as to slave representation, and no little temper was displayed on both sides, but at the close of the session on that day they had developed the subject into the following form, which they then approved :—

“ *Provided always,* That representation ought to be proportioned according to direct taxation ; and, in order to ascertain the alterations in the direct taxation which may be required, from time to time, by the changes in the relative circumstances of the states,—

“ *Resolved,* That a census be taken within six years from the first meeting of the legislature of the United States, and once within the term of every ten years afterwards, of all the inhabitants of the United States, in the manner, and according to the ratio, recommended by Congress in their resolution of April 18, 1783 [rating the blacks at three-fifths of their number]; and that the legislature of the United States shall proportion the direct taxation accordingly.”

\* This idea found its way into the final Constitution, but Gouverneur Morris does not seem to have wanted it to do so. He expressed the hope on July 24 that the Committee of Detail would cut it out entirely, and stated that he had merely meant it as a temporary bridge to assist them over a certain gulf. His object had been to lessen the eagerness of the South for a large share of representation by proportionally increasing their taxation and, at the same time, equally to lessen the opposition of the North to the same measure.

There was still more than two days' discussion upon the general subject in hand, and efforts were again made to change the whole basis of representation agreed upon, and a suggestion made \* to fix the representation in the Senate so that Virginia should have five votes, the smaller States one, and the others each a specified number between these two figures; but members were evidently tired of the subject, and but little change was made. On motion of Randolph the word "wealth" was, on July 13, struck out from the clause in the report of July 9, which had been agreed to, authorizing the legislature to apportion representation according to wealth and numbers of inhabitants, and the language was altered in some particulars. Other minor alterations were made, and it is worthy of note that the jealousy of the possible new States, which had appeared in a number of speeches earlier, cropped out here very strongly in a proposition † of Gerry to add a clause "that, in order to secure the liberties of the states already confederated, the number of representatives in the first branch, of the states which shall hereafter be established, shall never exceed in number the representatives from such of the states as shall accede to this Confederation." Massachusetts and Connecticut voted for this provision with Delaware and Maryland, but all the other Southern States voted against it.

One other proposal of note was made ‡ here by Gerry, that in the Senate the States should vote *per capita*, so as to prevent the delays experienced in Congress, and give a national aspect and spirit to the business. The methods of Congress and its incapacity

\* Elliot, v. 311.

† Ibid., v. 310.

‡ Ibid., v. 311.

had made a deep impression on members, and some of the opposition to letting the States be represented in the Senate was apparently based on the belief that any such plan would result in making the Senate as incompetent as Congress. Gerry's proposal was probably intended to obviate this. Sherman expressed his willingness to accept Gerry's suggestion.

Finally, on Monday, July 16, after having been before the House, as distinguished from the earlier discussion in committee of the whole, continuously since June 27, the series of resolutions, as variously amended and agreed upon, was brought to a vote as a whole, and was approved by five votes to four in the language given below, but even this did not yet quite end the matter. The next day there was some little outburst of temper upon the subject in the Convention, and there was an adjournment to give time to consider, and the morning after that several members from the larger States met\* to discuss the matter; they found themselves not united, however, some being clear that no good government could be secured upon the lines laid down, and being, therefore, in favor of a firm adherence to their views, even though the Convention should break up in consequence. Others were inclined to yield to some extent, and to agree to such plan as the Convention should decide upon. Some members from smaller States attended this quasi-caucus, and much time was wasted in loose talk, with no result but to show the lack of union among the supporters of proportional representation. Indeed Madison says that it is probable the result of this talk satisfied the

\* Elliot, v. 319.

members from smaller States that they had nothing to apprehend from a union of the larger States. At the session of the Convention after this meeting Governor Morris moved to reconsider the whole resolution, but his motion was not seconded. The resolutions which had been thus decided upon read as follows:—

“*Resolved*, That, in the original formation of the legislature of the United States, the first branch thereof shall consist of sixty-five members, of which number

New Hampshire shall send . . . 3	Delaware shall send . . . . . 1
Massachusetts shall send . . . 8	Maryland shall send . . . . . 6
Rhode Island shall send . . . 1	Virginia shall send . . . . . 10
Connecticut shall send . . . . 5	North Carolina shall send . . . 5
New York shall send . . . . 6	South Carolina shall send . . . 5
New Jersey shall send . . . . 4	Georgia shall send . . . . . 3
Pennsylvania shall send . . . 8	

“But as the present situation of the states may probably alter in the number of their inhabitants, the legislature of the United States shall be authorized, from time to time, to apportion the number of representatives; and in case any of the states shall hereafter be divided, or enlarged by addition of territory, or any two or more states united, or any new states created within the limits of the United States, the legislature of the United States shall possess authority to regulate the number of representatives, in any of the foregoing cases, upon the principle of their number of inhabitants, according to the provisions hereafter mentioned: *Provided always*, that representation ought to be proportioned according to direct taxation. And in order to ascertain the alteration in the direct taxation which may be required from time to time by the changes in the relative circumstances of the states,—

“*Resolved*, That a census be taken within six years from the first meeting of the legislature of the United States, and once within the term of every ten years afterwards, of all the inhabitants of the United States, in the manner, and according to the ratio recommended by Congress in their resolution of the 18th day of April, 1783; and that the legislature of the United States shall proportion the direct taxation accordingly.

*“Resolved,* That all bills for raising or appropriating money, and for fixing the salaries of officers of the government of the United States, shall originate in the first branch of the legislature of the United States, and shall not be altered or amended in the second branch ; and that no money shall be drawn from the public treasury but in pursuance of appropriations to be originated in the first branch.

*“Resolved,* That, in the second branch of the legislature of the United States, each state shall have an equal vote.”

These resolutions were later referred in this form to the Committee of Detail ; they included several subjects which do not belong to the portion of the Constitution with which we are here concerned, and these will therefore come up again in the consideration of other parts of the final instrument. In adapting those portions of the resolutions which do refer to the part of the Constitution now under consideration, Randolph's draft is not clear. His article on the legislative seems aimed to carry out only the permanent basis of representation, and he inserted no provision for the temporary plan of representation, unless we may suppose that, where he has written in regard to putting the government into operation, “each legislature shall direct the choice of representatives according to the seventh article” (which words cannot be referred to any actual article in his draft), he meant the *eighth resolution* referred to the committee. The Committee of Detail elaborated his propositions and reported the following as a part of Article IV. of the proposed Constitution :—

“SECTION 3. The House of Representatives shall, at its first formation, and until the number of citizens and inhabitants shall be taken in the manner hereinafter described, consist of sixty-five members, of whom three shall be chosen in New Hampshire,

eight in Massachusetts, one in Rhode Island and Providence Plantations, five in Connecticut, six in New York, four in New Jersey, eight in Pennsylvania, one in Delaware, six in Maryland, ten in Virginia, five in North Carolina, five in South Carolina, and three in Georgia.

“SECTION 4. As the proportions of numbers in different states will alter from time to time; as some of the states may hereafter be divided; as others may be enlarged by addition of territory; as two or more states may be united; as new states will be erected within the limits of the United States,—the legislature shall, in each of these cases, regulate the number of representatives by the number of inhabitants, according to the provisions hereinafter made, at the rate of one for every forty thousand.

“SECTION 5. All bills for raising or appropriating money, and for fixing the salaries of the officers of government, shall originate in the House of Representatives, and shall not be altered or amended by the Senate. No money shall be drawn from the public treasury, but in pursuance of appropriations that shall originate in the House of Representatives.”

The fourth article of the draft containing these sections came up before the Convention on August 7, and though there was not any very elaborate discussion, I think one can see how strongly members desired to change it *in toto*, and yet hesitated, because they knew they were on dangerous ground, upon which they had nearly gone to pieces more than once already. The third section was soon agreed to, but there was some debate over the fourth. Williamson moved, on August 8, to strike out the words “according to the provisions hereinafter made” and to insert “according to the rule hereafter to be provided for direct taxation,” and his purpose evidently was to make clear the right to a representation for three-fifths of the blacks. The clause as reported did not clearly attain that purpose, and therefore was not in accord with the resolutions referred;

there was strictly no “provision hereinafter made,” and the only approach to it was in the third section of the seventh article, which provided that the *proportions of direct taxation* should be so regulated, but was silent on the subject of representation.

Williamson’s motion was carried, but led to quite an animated discussion. King made a strong attack upon the slave representation, and doubted whether he should ever be willing to agree to it; he had allowed it to pass for the time in the hope that the concession would produce a readiness to strengthen the general government, but such had not been the result. He would never agree, he said, to let slaves be imported without limitation and then to admit them to be represented. Gouverneur Morris also spoke upon this point, and objected strenuously to encouraging the importation of fresh supplies of negroes by the assurance that their votes would count in representation. “The houses in this city,” he said, “are worth more than all the wretched slaves who cover the rice-swamps of South Carolina.” Sherman, in reply, considered that the negroes are not admitted to representation, but merely that the freemen of the Southern States are to be represented according to the taxes they pay, and the negroes are only included in the estimate of the taxes. In reply to another non-slave State objection of the possible necessity for them to bear expenses in suppressing slave insurrections, Charles Pinckney replied that the fisheries and the western frontier were far more burdensome than the slaves. A motion made to insert “free” before “inhabitants” in the fourth section was defeated.

Madison and Sherman objected on August 8 to fix-

ing the ratio at one for every forty thousand, and on their motion the words "not exceeding" were inserted, and a proviso was also added that each State should have at least one representative. The fourth section with these few changes was then agreed to.

The fifth section was struck out on August 8 after a short discussion, despite the objection of some members, who argued that they should not disturb the compromise already entered into, and the very next day Randolph expressed his dissatisfaction with this vote, and gave notice that he should move a reconsideration.\*

On September 8, just after the appointment of the Committee on Style, Williamson moved that the clause relating to the number of the House of Representatives should be reconsidered, so as to increase the number. Madison and Hamilton were in favor of the motion, Sherman against it. It was lost by six noes to five ayes.

One other clause reported by the Committee of Detail needs to be considered in this connection. It has been shown that the resolutions referred to them provided that representation ought to be proportioned to direct taxation, and that a census should be regularly taken so as to enable the legislature to apportion the representation according to the resolution of Congress of April 18, 1783. Randolph carried out the provision for a census closely in his article on the legislative, and inserted that as to representation and direct taxation as a restriction on the legislative power to raise money by taxation, but the committee changed

\* See this considered more at length under Article I, Section 7, Clause 1.

this, and seem to have omitted not only here, but from the whole Constitution, any distinct provision that *representation* should be on the same basis as direct taxation. It has been shown how this omission was cured by an amendment the Convention made to the clauses just considered. The clause now in hand was reported by them in the following form :—

“ARTICLE VII., SECTION 3. The proportions of direct taxation shall be regulated by the whole number of white and other free citizens and inhabitants of every age, sex, and condition, including those bound to servitude for a term of years, and three-fifths of all other persons not comprehended in the foregoing description, (except Indians not paying taxes;) which number shall, within six years after the first meeting of the legislature, and within the term of every ten years afterwards, be taken in such a manner as the said legislature shall direct.”

When this came up before the Convention on August 20 and 21, the words “white and other” were struck out as superfluous, and the clause was altered to require the first census to be taken within three instead of six years. King asked what was the precise meaning of *direct* taxation, but he received no reply. There was a good deal of difference of opinion as to the method of raising taxes until the first census, and quite a number of motions were made upon this subject, but all lost. Luther Martin moved an amendment requiring that direct taxes should first be apportioned among the States, and then requisitions be made, but only New Jersey voted in its favor. The clause as amended was agreed to.

The clauses we have been considering were referred, therefore, to the Committee on Style in the following form :—

“ARTICLE IV., SECTION 3. The House of Representatives shall, at its first formation, and until the number of citizens and inhabitants shall be taken in the manner hereinafter described, consist of sixty-five members, of whom three shall be chosen in New Hampshire, eight in Massachusetts, one in Rhode Island and Providence Plantations, five in Connecticut, six in New York, four in New Jersey, eight in Pennsylvania, one in Delaware, six in Maryland, ten in Virginia, five in North Carolina, five in South Carolina, and three in Georgia.

“SECTION 4. As the proportions of numbers in the different states will alter from time to time; as some of the states may hereafter be divided; as others may be enlarged by addition of territory; as two or more states may be united; as new states will be erected within the limits of the United States,—the legislature shall, in each of these cases, regulate the number of representatives by the number of inhabitants, according to the rule hereafter to be provided for direct taxation, at the rate of not exceeding one for every forty thousand, provided that each state shall have at least one representative.”

“ARTICLE VII., SECTION 3. The proportions of direct taxation shall be regulated by the whole number of free citizens and inhabitants, of every age, sex, and condition, including those bound to servitude for a term of years, and three-fifths of all other persons not comprehended in the foregoing description, (except Indians not paying taxes;) which number shall within three years after the first meeting of the legislature, and within the term of every ten years afterwards, be taken in such manner as the said legislature shall direct.”

It was evidently by the consolidation and rearrangement of these provisions that the Committee on Style arrived at the following, which they reported as Article I., Section 2, Clause 3:—

“Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to servitude for a term of years, and excluding

Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every forty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three."

On September 13, during the comparison of the report of the Committee on Style with the articles agreed on, the word "servitude" was struck out and "service" substituted, the former being thought to apply properly to slaves and the latter to free people. Dickinson and Wilson moved to strike out the words "and direct taxes" as improperly placed in a clause relating to the constitution of the House of Representatives. Gouverneur Morris explained that they had been inserted here in consequence of what had passed on the point in order to exclude the appearance of counting the negroes in the *representation*. The including of them may now be referred to the object of direct taxes and incidentally only to that of representation. The motion was lost. Williamson moved to reconsider, so as to increase the number of representatives for the first legislature, but the motion was lost.

On September 15, Langdon remarked that some members had been very uneasy that no increase of members had been allowed, and added that in particular one more each ought be allowed to North Carolina and Rhode Island. Sherman agreed with this view,

and a motion of Langdon to reconsider was carried by eight ayes to two noes. King opposed any increase, particularly in Rhode Island, as it would be unfair to Massachusetts. Bedford wanted to add a member for Delaware. After a very short discussion the Convention defeated the motions for an increase to North Carolina and Rhode Island by five ayes to six noes.

On September 17, after the Convention had on the 15th formally agreed to the instrument as amended, and had ordered it engrossed, and when they were ready to attest the instrument, Gorham said that, if it was not too late, he could wish, for the purpose of lessening objections to the plan, that the clause limiting the number of representatives to one for every forty thousand, which had produced so much discussion, might yet be reconsidered, so as to substitute "thirty thousand" for "forty thousand." King and Carroll supported the motion, and Washington, in putting the question, stated that though his position had theretofore restrained him from offering his sentiments on questions, yet he could not forbear expressing the wish that the alteration proposed should be made. He acknowledged that the smallness of the proportion of representatives had always seemed to him, as it did to others, an objection to the plan, and it was desirable that the grounds of objection should be as few as possible. He thought the point of so much consequence that it would give him much satisfaction to see it adopted. The motion of Gorham was then agreed to unanimously.

## ARTICLE I., SECTION 2, CLAUSES 4 AND 5.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

These clauses had their origin in the Committee of Detail. Randolph provided in his draft as to the House of Delegates that "vacancies shall be supplied by a writ from the governor of the state, wherein they shall happen." He had at first proposed that the writ should issue from the "speaker or any other officer appointed by the house," but had cancelled this. He also wrote that the presiding officer of the House should be "fixed by the legislatures from time to time or on their default by the national legislature," and in another place that the Executive should be "removable on impeachment by the house of representatives." The twelfth resolution referred had provided that the Executive should be impeachable, but was silent as to who should find or try the impeachment. The committee reported as follows:—

"ARTICLE IV., SECTION 6. The House of Representatives shall have the sole power of impeachment. It shall choose its speaker and other officers.

"SECTION 7. Vacancies in the House of Representatives shall be supplied by writs of election from the executive authority of the state in the representation from which they shall happen."

These clauses were agreed to in the Convention at once on August 9 without discussion, and were later referred in the same form to the Committee on Style:

that committee merely altered their form and arrangement, reporting them as follows:—

“ When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

“ The House of Representatives shall choose their speaker and other officers; and they shall have the sole power of impeachment.”

On September 14, during the comparison by the Convention of the report of the Committee on Style with the articles agreed on, the word “they” in the latter part of the fifth clause was struck out.\*

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### ARTICLE I., SECTION 3, CLAUSES 1-3.

The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The seats of the Senators of the first Class shall be vacated at the Expiration of the second year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one-third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

\* Elliot, i. 311.

Charles Pinckney's speeches show\* that his draft apportioned the States into districts, so as to give to each "its due weight" as ascertained in part from wealth: and he then had the Senators elected for a term of four years by the federal House of Delegates. The fifth resolution of the Virginia plan provided as follows upon the same subject:—

"*Resolved*, that the members of the second branch of the national legislature ought to be elected, by those of the first, out of a proper number of persons nominated by the individual legislatures; to be of the age of                    years at least; to hold their offices for a term sufficient to insure their independency; to receive liberal stipends, by which they may be compensated for the devotion of their time to the public service; and to be ineligible to any office established by a particular state, or under the authority of the United States, except those peculiarly belonging to the functions of the second branch, during the term of service; and for the space of                    after the expiration thereof."

When the Convention took up this subject on May 31, Spaight moved that the second branch ought to be chosen by the State legislatures, and Sherman favored the election of one member by each of the State legislatures. King, however, reminded the committee that Spaight's plan was impracticable, unless either the body should be very large or the idea of proportion among the States was to be disregarded, and Spaight then withdrew his motion. A vote was taken on the first part of Randolph's resolution as to the first branch electing the second branch out of nominations by the State legislatures, but it was lost and a chasm left in this part of the plan.

On June 7 this same subject was taken up again,

\* Moore's American Eloquence, i. 364.

and Dickinson moved "that the members of the second branch ought to be chosen by the individual legislatures," and this was passed after the defeat of a substitute leaving their election to the people. In the debate Dickinson stated it as his opinion that the second branch ought to bear as strong a likeness to the House of Lords as possible, while Wilson contended that "the British government cannot be our model. We have no materials for a similar one." Charles Pinckney favored Dickinson's plan as giving stability, but would divide the States into three classes according to their size, and allow one, two, and three members, according to the size of the class. Wilson wanted the Senate as well as the House elected by the people, and thought there were sure to be contests between the two houses if one were chosen by the people and the other by the State legislatures. Mason thought that the State legislatures ought to be provided with some means of defence against the national government, and that no better means could be provided than to make them a constituent part of the national establishment.

On June 12, after a motion to strike out from the resolution all provision as to age was lost, it was moved and carried to fill up the blank with "thirty," and then Spaight moved to fill up the blank for the term of office with "seven years," and there was some debate upon the subject. Sherman thought the period too long, and preferred five years; if the members did their duty, they would be re-elected, while there would be an opportunity to get rid of them, if they acted amiss. Pierce proposed three years, and thought so long a term as seven years would raise an alarm. He was of opinion that great mischiefs had arisen in

England from their septennial act, and that it was reprobated by most of their patriotic statesmen. Randolph was for seven years, and said that the democratic licentiousness of the State legislatures proved the necessity of a firm senate; the object of the second branch was to control the democratic first branch. Madison thought seven years none too long, and wanted to give that stability which was everywhere called for. He regretted that they had so little experience to guide them; the constitution of Maryland was the only analogous one, and in no instance in that State had the Senate created just suspicions of danger, though they had perhaps erred in some instances by yielding to the House of Delegates. In every case where they had opposed the measures of the House they had received the support of the most enlightened and impartial people. In States, on the other hand, where the Senate was chosen in the same manner as the House and held their seats for four years, it was found to be no check against the instability of the other branch. He conceived it to be of great importance that a stable and firm government organized in the republican form should be held out to the people. The motion for seven years was carried.

The portions of this clause having reference to the part of the Constitution now under consideration were, therefore, reported by the committee of the whole in the following form:—

*“Resolved*, That the members of the second branch of the national legislature ought to be chosen by the individual legislatures; to be of the age of thirty years at least; to hold their offices for a term sufficient to insure their independence, namely, seven years; . . .”

In the revision by the Convention proper of the resolutions agreed upon in committee of the whole, on June 25 and 26, this clause came up again, and Charles Pinckney made an admirable speech on the impracticability of our following the English system. Material differences were met on almost every point. There was great difficulty in deciding how to appoint the second branch, until they should determine the mode of their voting, and motions were made to postpone the subject until this latter point was settled. Again, there was the greatest variety of opinion on the length of term, nine, seven, six, and four years being all advocated. They at length voted for a six-year term, one-third to go out biennially, after having once negatived a bald six-year term. Finally, the clause stood as follows:—

“*Resolved*, That the members of the second branch of the legislature of the United States ought to be chosen by the individual legislatures; to be of the age of thirty years at least; to hold their offices for six years, one-third to go out biennially. . . .”

Nothing had yet been determined as to the basis of representation in the Senate, and it will now be necessary to consider some other discussions of the Convention, which led to the settlement of this point. On June 11, during the discussions in committee of the whole upon the general subject of the basis of representation, Sherman suggested that the suffrage in the first branch should be proportioned to population, “and that in the second branch, or Senate, each state should have one vote and no more;” but a motion to this effect was lost by five to six, and the committee reported to the Convention in the seventh and eighth resolutions in favor of proportional representation in both branches.

Again, on June 29, early in the struggle in the Convention itself over the subject of representation, Johnson argued that, as the States existed and were to continue to exist, they must be armed with some power of self-defence; and he suggested that in *one* branch the *people* ought to be represented, and in the *other* the *States*. But the Convention was not yet ready to agree to this plan, and on July 2 it again defeated by an even vote a motion of Ellsworth that "in the second branch of the legislature of the United States, each state shall have an equal vote."

As the small States positively refused to agree to a constitution which did not secure them equal suffrage in at least one branch of the legislature, this left them, as Sherman said,\* at a full stop; but some other propositions were made, and finally, on motion of Charles Cotesworth Pinckney, a committee of one member from each State was appointed by ballot, "to devise and report some compromise." Gerry, Ellsworth, Yates, Paterson, Franklin, Bedford, Martin, Mason, Davy, Rutledge, and Baldwin were appointed, and they held their meetings between July 2 and 5. Sherman attended the meetings in place of Ellsworth, who was sick, and proposed † that they should report to the following effect:—

"That each state shall have an equal vote in the second branch; provided that no decision therein shall prevail unless the majority of states concurring shall also comprise a majority of the inhabitants of the United States."

This proposal was based on a similar one made in the debates on the Articles of Confederation. Finally,

\* Elliot, v. 270.

† Ibid., v. 274.

Franklin made the proposal which was reported. It was barely acquiesced in by the States opposed to an equality in the second branch, and was considered by those who supported this equality as a gaining of their point.

The committee reported \* in favor of equal representation of the States in the Senate and of proportional representation in the House, and also reported a provision that no money should be drawn from the treasury but in pursuance of law, and that money bills should originate in the House and not be subject to alteration in the Senate. Great store was set upon these latter provisions by some of those who favored proportional representation, and the members from the smaller States contended that it was a great concession on their part to yield the point. The compromise had thus grown to cover other points than those originally concerned, and its details have been more fully considered in another place (Article I., Section 2, Clause 3). On July 7 the Convention voted by six to three (two States divided) in favor of the equal vote of the States in the Senate, and on July 16 the whole compromise was agreed to by five votes to four. There was still much dissatisfaction evident, and the day succeeding this vote several members from the larger States met † to discuss the matter. They found themselves, however, not united, some being clear that no good government could be secured upon the lines laid down and being in favor of an adherence to their views, even though the Convention should break up in consequence, while others were inclined to yield to some

\* Elliot, v. 273, 274.

† Ibid., v. 319.

extent and to agree to such plan as the Convention should decide upon. Some members from smaller States were present at this caucus, and the only result of the conference seems to have been to convince them that they had nothing to apprehend from a union of the large States.

On July 14, while the question of representation was still before the Convention, Gerry suggested that in the Senate the States should vote *per capita*. This would, he said, prevent the delays and inconveniences experienced in Congress, and give a national aspect and spirit to the management of business. And on July 23, after the well-known compromise on the whole subject of representation had been agreed upon, the Convention took up the subject of the second branch, and Gouverneur Morris and King moved "that the representation in the second branch of the legislature of the United States consist of        members from each state, who shall vote *per capita*." Ellsworth said he had always been in favor of that mode of voting, while Luther Martin opposed the motion as departing from the idea of the States being represented in the second branch. After the defeat of a motion to fill the blank up with "three," a motion was carried to fill it with "two," and the whole motion was then adopted\* by nine to one.

Thus, the resolutions which we have been considering—in so far as they have reference to the portion of the Constitution here concerned—read as follows:—

"4. *Resolved*, That the members of the second branch of the legislature of the United States ought to be chosen by the in-

\* Elliot, v. 357.

dividual legislatures; to be of the age of thirty years at least; to hold their offices for six years, one-third to go out biennially. . . .”

“11. *Resolved*, That, in the second branch of the legislature of the United States, each state shall have an equal vote.”

“22. *Resolved*, That the representation in the second branch of the legislature of the United States shall consist of two members from each state, who shall vote *per capita*.”

In this form they were referred to the Committee of Detail, and Charles Pinckney’s draft was also referred to them. In developing these provisions Randolph’s draft contained almost exactly the plan of rotation later reported by the committee in the second section of Article V.; and he wrote as follows upon the other points:—

“The legislature of\* each state shall appoint two senators, using their discretion as to the time and manner of choosing them.

“The qualifications of senators shall be the age of 25 [sic] years at least, citizenship in the United States, and property to the amount of . . .

“Each senator shall have one vote.”

The Committee of Detail reported as follows:—

“ARTICLE V., SECTION 1. The Senate of the United States shall be chosen by the legislatures of the several states. Each legislature shall choose two members. Vacancies may be supplied by the executive until the next meeting of the legislature. Each member shall have one vote.

“SECTION 2. The senators shall be chosen for six years; but immediately after the first election, they shall be divided, by lot, into three classes, as nearly as may be, numbered one, two, and three. The seats of the members of the first class shall be va-

\* The words “the legislature of” are interlined, as if the original idea had been to let the State appoint in such way as it pleased.

cated at the expiration of the second year; of the second class at the expiration of the fourth year; of the third class at the expiration of the sixth year;—so that a third part of the members may be chosen every second year.

“SECTION 3. Every member of the Senate shall be of the age of thirty years at least; shall have been a citizen in the United States for at least four years before his election; and shall be, at the time of his election, a resident of the state for which he shall be chosen.\*

“SECTION 4. The Senate shall choose its own President and other officers.”

When this article came up in the Convention on August 9, some objection was again made to the provision in the final clause of Section I. as to each member having one vote, but others thought that it should not be changed, as it was a part of the compromise they had agreed upon, and the clause was approved. Several minor changes were made in the various sections, and the word “four” was struck out and “nine” inserted in the third section as the length of citizenship required, after the defeat of motions for fourteen, thirteen, and ten. During this discussion † several members expressed their opposition to the easy admission of foreigners to the legislature, and Wilson explained the curious position he might be put in of aiding to draw the Constitution and yet being incapable (because of foreign birth) of holding office under

\* An effort was made in the Convention to require property qualifications for certain officers, and particularly for Senators, and the subject was referred to the Committee of Detail; and they reported a clause (Article VI., Section 2) authorizing the legislature to establish such uniform qualifications with regard to property as they should see fit. But this clause was later defeated (see Defeated Proposals; Qualifications for Officers).

† Elliot, v. 398-401.

it: his remarks were made upon Gouverneur Morris's motion for fourteen years, which he thought would give the instrument a very illiberal complexion. There was also at a later stage quite a discussion in the Convention of the like provision in regard to members of the House of Representatives (see Article I., Section 2, Clauses 1 and 2), in which Wilson took an active part, and Gouverneur Morris moved (evidently to meet cases like Wilson's) a proviso that the seven years' limitation should not affect the rights of any one now a citizen, but the motion was defeated by six noes to five ayes.\*

Wilson moved † again, at a later date, that the requirement of citizenship for a senator should be reduced from nine years to seven; but the motion was lost, and the requirement of nine years was confirmed by eight ayes to three noes.

The provisions for the Senate stood now as follows:—

"ARTICLE V., SECTION 1. The Senate of the United States shall be chosen by the legislatures of the several states. Each legislature shall choose two members. Vacancies happening by refusals to accept, resignations, or otherwise, may be supplied by the legislature of the state in the representation of which such vacancies shall happen, or by the executive thereof until the next meeting of the legislature. Each member shall have one vote.

"SECTION 2. The senators shall be chosen for six years; but immediately after they shall be assembled in consequence of the first election, they shall be divided, by lot, into three classes, as nearly as may be, numbered one, two, and three. The seats of the members of the first class shall be vacated at the expiration of the second year; of the second class at the expiration of the fourth year; of the third class at the expiration of the sixth

\* Elliot, v. 412-14.

† Ibid., v. 414.

year;—so that a third part of the members may be chosen every second year.

“SECTION 3. Every member of the Senate shall be of the age of thirty years at least; shall have been a citizen of the United States for at least nine years before his election; and shall be, at the time of his election, an inhabitant of the state for which he shall be chosen.

“SECTION 4. The Senate shall choose its own president and other officers.”

In this form the matter was referred to the Committee on Style, and they reported as follows:—

“The Senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.

“Immediately after they shall be assembled in consequence of the first election, they shall be divided, as equally as may be, into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year; of the second class at the expiration of the fourth year; and of the third class at the expiration of the sixth year; so that one-third may be chosen every second year. And if vacancies happen by resignation, or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature.

“No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.”

It is not clear whether the second section was reported precisely as above: according to the Debates, the words “by lot” were still in it, and were struck \* out *nem. con.* in the comparison by the Convention of the report of the Committee on Style with the articles agreed on, so as to avoid the chance of both members

\* Elliot, v. 541.

from a State going out at once; and at the same stage of the proceedings the words "which shall then fill such vacancies" were added \* to the second clause (at the end) after "legislature."

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### ARTICLE I., SECTION 3, CLAUSES 4 AND 5.

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

These clauses seem to have originated entirely in the Committee of Detail, or at a still later stage of the Convention's proceedings. Randolph's committee draft provided as to the Senate that it "shall have power to make rules for its own government," but he inserted in it no other clause possibly relating to the presiding officer of the Senate. Rutledge, however, under the heading of the Executive, has inserted on the margin "the President of the Senate to succeed to the Executive in case of Vacancy until the Meeting of the Legislature." The committee reported, as has been already seen under the preceding heading, as the fourth section of the article upon the Senate:—"The Senate shall choose its own President and other officers;" and this was agreed to by the Convention *nem. con.* on August 9.

Something more was, however, added to the clause at

\* Elliot, i. 311.

a much later stage from the plan of electing the Executive finally agreed upon. This subject is considered more at length in another place (Article II., Section 1, Clauses 1-4), and it is there shown that the method adopted for electing the President was the device of the Committee of August 31 on Unfinished Portions. The Convention had vacillated a good deal upon the Executive, and on August 24 it postponed the greater part of the provisions for his choice then contained in the draft of a constitution, and the subject consequently went to the Committee on Unfinished Portions. This committee made radical changes, and reported in the main the plan which was adopted: it provided for the choice by electors of a President and Vice-President, and as to the latter officer, the third section \* provided as follows:—

“The Vice-President shall be *ex officio* president of the Senate; except when they sit to try the impeachment of the President; in which case the chief justice shall preside, and excepting, also, when he shall exercise the powers and duties of President; in which case, and in case of his absence, the Senate shall choose a president *pro tempore*. The Vice-President, when acting as president of the Senate, shall not have a vote unless the House be equally divided.”

When this provision came up for discussion in the Convention, on September 7, Gerry, Randolph, and Mason saw no need for a Vice-President, and thought it an encroachment on the Senate to make him their presiding officer. Sherman said that if he were not made president of the Senate he would be without employment; and Williamson said that such an officer was introduced merely for the sake of a valuable mode

\* Elliot, v. 507.

of election, which required two to be chosen at the same time. By a vote of eight to two the Convention approved of the clause making the Vice-President the president of the Senate, and the other parts of the section were also then agreed to, and the matter referred to the Committee on Style, which reported as follows upon the points involved in the clauses now under consideration :—

“The Vice-President of the United States shall be, *ex officio*, president of the Senate, but shall have no vote, unless they be equally divided.

“The Senate shall choose their other officers, and also a president *pro tempore*, in the absence of the Vice-President, or when he shall exercise the office of President of the United States.”

In the comparison by the Convention of the report of the Committee on Style with the articles agreed on, the words “*ex officio*” in the first of the above clauses were struck \* out as unnecessary.

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### ARTICLE I., SECTION 3, CLAUSE 6.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: and no Person shall be convicted without the Concurrence of two thirds of the Members present.

The ninth resolution of the Virginia plan upon the subject of the judiciary referred to that branch the trial of “impeachments of any national officer,” and these

\* Elliot, v. 541.

words were approved by the committee of the whole on June 13, but were unanimously struck out by the Convention itself on July 18, and the clause left to read that their jurisdiction should extend "to cases arising under laws passed by the general legislature, and to such other questions as involve the national peace and harmony." No specific provision was made in any other part of the resolutions in regard to the trial of impeachments, and the matter was referred in this form to the Committee of Detail. Randolph's committee draft, however, extends the jurisdiction of the supreme tribunal "to impeachments of national officers," and the report of the committee provided by the third section of the eleventh article that the jurisdiction of the Supreme Court should extend to "the trial of impeachments of officers of the United States," and that their jurisdiction in such cases should be original.

There was as yet no other mode provided for the impeachment and trial of judges, so that they would have been triable by the judiciary under the language of this general provision. On August 20, however, Gerry introduced and had referred to the Committee of Detail a motion "that the committee of detail be directed to report . . . a mode for trying the supreme judges in cases of impeachment." This committee reported on August 22, recommending to add to the end of the second section of the eleventh article (Judiciary) the following words:—"the judges of the Supreme Court shall be triable by the Senate, on impeachment by the House of Representatives." This clause was not, however, acted on, so it went to the Committee on Unfinished Portions; to it went also

the clause above quoted as to the jurisdiction of the Supreme Court extending to the trial of impeachments generally, which had been postponed on August 27 at the instance of Gouverneur Morris and had not been taken up again. He thought the tribunal an improper one, particularly if the first judge was to be of the privy council. That committee had before it also Article IX., Section 1, of the draft of August 6, which then referred to the Senate the power to make treaties and to appoint ambassadors and judges of the Supreme Court.

It has been seen that the Committee of Detail had recommended, in a special report made by them on August 22, that the judges should be triable by the Senate upon impeachment by the House, and the Committee on Unfinished Portions now proposed to adopt this method for the trial of impeachments generally, and recommended that all impeachments should be tried by the Senate, and at the same time they transferred the powers as to treaties and appointments from the Senate to the President. In their report on September 4 they recommended the adoption of the following as to the Senate:—

“The Senate of the United States shall have power to try all impeachments; but no person shall be convicted without the concurrence of two-thirds of the members present.”

This clause was postponed by the Convention on September 4 in order to decide previously on the mode of electing the President, and on September 8 was approved after being amended, on motion of Gouverneur Morris, by the addition of the words “and every member shall be on oath.”

Madison and Charles Pinckney objected to the Senate for the trial of impeachments of the President, and thought\* it would make him improperly dependent. Madison said he would prefer the Supreme Court. Gouverneur Morris thought no other tribunal could be trusted and that the Supreme Court were too few in numbers; and Sherman pointed out that the Supreme Court would be an improper tribunal, because the judges were to be appointed by him. A motion by Madison to strike out "the Senate" was defeated by nine States to two.

The clause was therefore later referred to the Committee on Style in the following form:—

"The Senate of the United States shall have power to try all impeachments, but no person shall be convicted without the concurrence of two-thirds of the members present, and every member shall be on oath."

To them was also referred a provision that the Vice-President should be President of the Senate, "except when they sit to try the impeachment of the President, in which case the chief-justice shall preside." This seems to have originated (see Article II., Section 1, Clauses 1-4) entirely in the Committee on Unfinished Portions at the time when the method of choosing the President by electors was devised,† and it had been approved‡ by the Convention on September 7.

The Committee on Style consolidated these two clauses and reported as follows:—

"The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath. When the President of the United States is tried, the chief jus-

\* Elliot, v. 528, 529.

† Ibid., v. 507.

‡ Ibid., v. 522.

tice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present."

On September 14, during the comparison of the report of the Committee on Style with the articles agreed on, the words "or affirmation" were inserted after "oath," and then Rutledge and Gouverneur Morris moved to add to the impeachment clause "that persons impeached be suspended from their offices until they be tried and acquitted;" but Madison contended that the President is already too dependent on the legislature, and King was also against the motion. It was lost by three ayes to eight noes.

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### ARTICLE I., SECTION 3, CLAUSE 7.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

This provision originated in the Committee of Detail. Randolph's draft contains nothing upon the subject, but the later committee draft in the Wilson papers contains the following marginal insertion in Rutledge's handwriting:—"Judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust or profit under the United States. But the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment according

to law." The Committee of Detail reported the clause in exactly the same form as the fifth section of Article XI., and when it came up in the Convention on August 28 it was at once agreed to, and was later referred, still in the same form, to the Committee on Style. They made almost no change, and reported it as follows:—

"Judgment, in cases of impeachment, shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit, under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law."

On September 14, during the comparison of the report of the Committee on Style with the articles agreed on, Rutledge and Gouverneur Morris moved to add a clause "that persons impeached be suspended from their offices until they be tried and acquitted," but Madison contended that the President is already too dependent on the legislature, and King was also against the motion. It was lost by three ayes to eight noes.

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#### ARTICLE I., SECTION 4, CLAUSE 1.

The Times, Places and manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

This clause seems to have originated entirely in the Committee of Detail. Randolph's draft provided as to

the House of Delegates that “the elections shall be biennially held on the same day through the same state,” and that “the place [of election] shall be fixed by the legislatures from time to time; or on their default by the national legislature.” And as to the Senate it provided that each State legislature should appoint two Senators, “using their discretion as to the time and manner of choosing them.” The committee reported the following:—

“ARTICLE VI., SECTION 1. The times, and places, and the manner, of holding the elections of the members of each House, shall be prescribed by the legislature of each state; but their provisions concerning them may, at any time, be altered by the legislature of the United States.”

When this came up before the Convention on August 9, Madison and Gouverneur Morris moved to confine the language to the House of Representatives, being of opinion that as to the Senators the right of the legislatures to regulate was necessarily involved in the right to appoint; but the motion was disagreed to. The first part of the section was then approved down to the authorization to the legislature of the United States to change the States’ provisions, but this latter provision occasioned some difference of opinion. Charles Pinckney and Rutledge moved to strike it out on the ground that the States should be relied on. Gorham, Madison, King, and Gouverneur Morris were all of the contrary opinion. Madison said that the words authorizing the States to regulate were words of great latitude, and it was impossible to see what abuse might be made of such discretion:—“Whether the electors should vote by ballot, or *viva voce*, should assemble at this place or that, should be divided into districts, or all meet at one

place, should all vote for all the representatives, or all in a district vote for a number allotted to the district,—these, and many other points would depend on the legislatures.” The motion of Pinckney and Rutledge was defeated, and the provision was changed, upon motion of Read, to read as follows, and was then approved:—

“but regulations, in each of the foregoing cases, may, at any time, be made or altered by the legislature of the United States.”

In this form the clause was referred to the Committee on Style, and they altered the language to read:—

“The times, places, and manner, of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; but the Congress may at any time by law make or alter such regulations.”

On September 14, during the final comparison of the report of the Committee on Style with the articles agreed on, the words “except as to the places of choosing senators” were added at the end of the clause in order to exempt the seats of government in the States from the power of Congress.

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#### ARTICLE I., SECTION 4, CLAUSE 2.

The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

This clause has been considered already at the same time with Article I., Section 1.

**ARTICLE I., SECTION 5, CLAUSE 1.**

Each House shall be the judge of the Elections, Returns and Qualifications of its own Members. . . .

This clause seems to have originated entirely in the Committee of Detail; the twenty-third resolution referred to them had a reference to *qualifications* of members, but the word seems to have been used in a different sense (see Defeated Proposals; Qualifications for Officers). The only part of Randolph's committee draft which bears any resemblance at all is the provision which he inserted separately as to the Senate and House, that each should "have power over its own members." The Committee of Detail reported the following as the fourth section of the sixth article of their draft:—

"Each House shall be the judge of the elections, returns, and qualifications, of its own members."

When this came up before the Convention on August 10, it was agreed to *nem. con.*, and the Committee on Style reported it in precisely the same language, merely changing its position.

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**ARTICLE I., SECTION 5, CLAUSE 1.**

. . . and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

This clause originated in the Committee of Detail and in additions to their report made later by the Con-

vention. Randolph's committee draft contains clauses both as to the Senate and House that "a majority shall be a quorum for business; but a smaller number may be authorized to call for and punish non-attending members, and to adjourn for any time not exceeding one week;" and this provision has been changed as to the Senate—apparently by Rutledge—so as to authorize adjournment only from day to day. The Committee of Detail reported as follows:—

"ARTICLE VI., SECTION 3. In each House a majority of the members shall constitute a quorum to do business; but a smaller number may adjourn from day to day."

When this clause came up before the Convention on August 10, there was some difference of opinion as to the proportion which ought to constitute a quorum, but the body adhered to the provision as reported upon that point. One of the objections urged to requiring a majority to constitute a quorum was that a few members would then be able to secede and to prevent the transaction of business. Ellsworth suggested that this might be guarded against by giving to each House the authority to require the attendance of absent members, and later, on motion of Randolph and Madison, the following words were added, and then the section as amended was approved:—"and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each House may provide." Another method of attaining much the same end was contained in Charles Pinckney's plan; his speeches show\* that he had devised some mode of compelling members to attend subject to severe penalties. His

\* Moore's American Eloquence, i. 369.

object was to prevent the inconveniences upon this subject which had been so severely felt in Congress. The whole clause as reported from the Committee of Detail with the amendment was referred to the Committee on Style, and they reported it in almost precisely the same language :—

“ . . . and a majority of each shall constitute a quorum to do business ; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each house may provide.”

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### ARTICLE I., SECTION 5, CLAUSE 2.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

This clause was the device of the Committee of Detail, but it is worthy of observation that Charles Pinckney’s plan contained some similar provision : his speeches \* show that his draft provided that the houses of Congress should be the judges of their own rules and proceedings. Randolph’s committee draft contained at one time, among the provisions relating to the House but apparently intended to apply to the Senate as well, “ votes shall be given by ballot, unless  $\frac{2}{3}$  of the national legislature shall choose to vary the mode,” but this is cancelled ; and later on he wrote as to the House (after cancelling a query “ how far the right of expulsion may be proper”) the words “ the house of

\* Moore’s American Eloquence, i. 369.

delegates shall have power over its own members," and again "the house shall have power to make rules for its own government." He inserted also similar provisions in regard to the Senate. The Committee of Detail reported as follows:—

"ARTICLE VI., SECTION 6. Each House may determine the rules of its proceedings; may punish its members for disorderly behavior; and may expel a member."

When this provision came up before the Convention on August 10, Madison thought that the power of expelling a member should not be left to a mere majority, and accordingly moved to insert the words "with the concurrence of two thirds" between "may" and "expel." Gouverneur Morris thought the power ought to remain with a majority, but the Convention adopted Madison's amendment, and then the section as amended was approved, and in this form the matter was later referred to the Committee on Style; they made merely some verbal changes, and reported as follows:—

"Each house may determine the rules of its proceedings; punish its members for disorderly behavior; and, with the concurrence of two thirds, expel a member."

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### ARTICLE I., SECTION 5, CLAUSE 3.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those present, be entered on the Journal.

This clause originated in the Committee of Detail, which reported the seventh section of the sixth arti-

cle as below. There is nothing concerning the same subjects in Randolph's committee draft :—

“The House of Representatives, and the Senate when it shall be acting in a legislative capacity, shall keep a journal of their proceedings ; and shall, from time to time, publish them ; and the yeas and nays of the members of each house, on any question, shall, at the desire of one fifth part of the members present, be entered on the Journal.”

When this came up before the Convention, on August 10 and 11, some wanted to authorize a call for the yeas and nays by a single member, while others thought the whole provision as to yeas and nays ought to be struck out, as it did no good and merely allowed members to stuff the journals and to mislead the people, who never knew the reasons determining votes. Carroll and Randolph wanted to confine the provision to the House of Representatives, and also moved to add an amendment “and any member of the Senate shall be at liberty to enter his dissent.” The Convention, however, adhered to the section as reported upon this subject. Gerry moved to amend the first part by striking out “when it shall be acting in its legislative capacity,” and adding after the words “publish them” the words “except such parts thereof as in their judgment require secrecy,” and the next day, after some motions in the same general direction were defeated, the Convention agreed to the suggestion, and then to the section as amended. It was later referred with this amendment to the Committee on Style, and they reported it as follows :—

“Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may, in their judgment, require secrecy ; and the yeas and nays

of the members of either house on any question shall, at the desire of one fifth of those present, be entered on the Journal."

On September 14, during the comparison of the report of the Committee on Style with the articles agreed on, Mason and Gerry moved to insert after "parts" the words "of the proceedings of the Senate," so as to require publication of all the proceedings of the House; but it was replied that cases might arise, such as a declaration of war, where secrecy might be necessary in both houses, and the motion was defeated by three ayes to seven noes.

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#### ARTICLE I., SECTION 5, CLAUSE 4.

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

This clause originated in the Committee of Detail. Randolph's committee draft provided that "The House shall not adjourn without the concurrence of the Senate for more than one week, nor without such concurrence to any other place than the one at which they are sitting;" and a corresponding provision was inserted as to the Senate, but the words "one week" cancelled and "three days" interlined. The committee reported the eighth section of Article VI. as follows:—

"Neither House, without the consent of the other, shall adjourn for more than three days, nor to any other place than that at which the two Houses are sitting. But this regulation shall not extend to the Senate when it shall exercise the powers mentioned in the Article."

When this came up in the Convention on August 11, objection was made by King to the right to adjourn to a new place, and he remarked on the discredit theretofore incurred by Congress through its changes of place. He thought a law at least should be necessary to a removal of the seat of government. Gouverneur Morris proposed to prefix the words "during the session," but Spaight feared this would fix the seat of government at New York. Some not important amendments to meet these criticisms were made, but were defeated, and the motion of Gouverneur Morris to prefix the words "during the session of the legislature" was then approved; the last sentence as to the Senate was struck out, and the section as amended agreed to. The clause as amended was later referred in the form above indicated to the Committee on Style, and they reported it as follows:—

"Neither house, during the session of Congress, shall, without consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting."

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#### ARTICLE I., SECTION 6, CLAUSE 1.

The Senators and Representatives shall receive a Compensation for their services, to be ascertained by Law, and paid out of the Treasury of the United States. . . .

The question of the salary to members of Congress had a varied history in the Convention. At the very opening of the proceedings, the fourth and fifth resolutions of the Virginia plan, upon the first and second branches respectively of the legislature, each contained a clause

that members ought “to receive liberal stipends, by which they may be compensated for the devotion of their time to the public service.” In the discussion in committee of the whole on June 12 in regard to the House of Representatives, the words “and fixed” were inserted after “liberal” on motion of Madison. Franklin expressed his dislike of the word liberal in regard to the salary and would prefer “moderate;” the word “liberal” was then struck out *nem. con.*, and the clause was further changed by the addition, on motion of Pierce, of a clause that the salary should “be paid out of the national treasury.”

In the House revision on June 22 Ellsworth moved to substitute payment by the States, and remarked that the manners of living in the different States varied so greatly that payment from the national treasury would be very inconvenient; several members supported the motion, but it was defeated. Wilson moved that the salary “be ascertained by the national legislature,” but Madison thought the members too much interested to decide upon their own compensation, and the motion was lost. Another amendment then substituted “adequate compensation” for “fixed stipends,” some members thinking it might be very inconvenient to *fix* the salaries in the Constitution, and those who favored that course being willing to let the point wait until they came to the details.\*

\* The clauses as to adequate compensation and payment out of the national treasury were considered adopted (see the third resolution referred under date of July 26, Elliot, v. 375), though this is not entirely clear; a motion for a question on them jointly became the subject of a point of order, but was later defeated (Elliot, v. 228–230).

The like clause in relation to the second branch, or Senate, was considered in committee of the whole on June 12, and was made to read as the similar clause in regard to the House then read, after the defeat of a motion of Butler and Rutledge that members of the second branch should receive no salary. In the House revision on June 26, Charles Cotesworth Pinckney again proposed that no salary be paid. He thought that the second branch was intended to represent the wealth of the country and ought to be composed of persons of wealth. Franklin seconded the motion, but it was lost by six noes to five ayes. Ellsworth moved that the members should be paid by their respective States instead of from the national treasury, but Madison and Dayton considered that this would subvert the end intended by the long term of office, and would be fatal to the members' independence and in effect make them hold during the pleasure of the State legislatures. The motion was lost by six noes to five ayes, but very soon after it was resolved that the words that members ought "to be paid out of the national treasury" should not stand as a part of the resolution, and no other source of payment was then substituted by the Convention. The clause was left to read merely that the members of the second branch ought "to receive a compensation for the devotion of their time to the public service:" and in this form it was later referred to the Committee of Detail with the clause shown above as to the salary of members of the House.

In carrying out these indications, Randolph wrote a few immaterial words in his committee draft in relation to the wages of members of the House, but cancelled them and made no other provision. In reference to

the Senate also the provision he had at one time written was cancelled, but it is curious enough to be worthy of reproduction :—

"The wages of senators shall be paid out of the treasury of the United States; those wages for the first six years shall be

dollars per diem. At the beginning of every sixth year after the first the supreme judiciary shall cause a special jury of the most respectable merchants and farmers to be summoned to declare what shall have been the averaged value of wheat during the last six years, in the state where the legislature may be sitting; and for the six subsequent years, the senators shall receive per diem the averaged value of bushels of wheat."

The Committee of Detail, instead of reporting a separate provision as to the Senate and the House in the respective articles treating of them, consolidated the two clauses into one, and made a very material change as to the source of payment. The tenth section of their Article VI. read as follows:—

"The members of each House shall receive a compensation for their services, to be ascertained and paid by the state in which they shall be chosen."

When this section came up before the Convention on August 14, Ellsworth said that upon reflection he was satisfied that too much dependence on the States would be produced by having their salaries paid by the States, and he moved that they should be paid out of the treasury of the United States. Gouverneur Morris, Langdon, Madison, Mason, Carroll, and Dickinson also argued in favor of making the members payable out of the treasury of the United States, while Butler and Luther Martin argued for the provision as it was reported; by a vote of nine to two the Convention decided to amend the section to read "paid out of the

treasury of the United States." Ellsworth and some others wanted to add to this a provision that the allowance should not exceed "      dollars per day, or the present value thereof." Dickinson regretted that wheat or some other permanent standard could not be taken, and suggested that an act should be passed by the national legislature every twelve years to fix the wages. These propositions did not, however, meet with favor, and the Convention added the words "to be ascertained by law," and then agreed to the section as amended.

The clause now read :—"The members of each house shall receive a compensation for their services to be ascertained by law and paid out of the Treasury of the United States," and the Committee on Style made merely verbal changes and then reported as follows :—

"The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States . . ."

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### ARTICLE I., SECTION 6, CLAUSE 1.

. . . They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same ; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

This clause had its origin in the Committee of Detail, and there was nothing upon its subject in the resolutions of the Convention. Randolph inserted clauses in his committee draft as to both houses separately that the members "shall be privileged from

*arrest*—personal restraint—during their attendance, and for so long a time before and after as may be necessary for travelling to and from the legislature.” He had also at one time added to this “and they shall have no other privilege whatsoever,” but these words are cancelled. The fifth clause of Article VI. of the draft reported by the committee read :—

“ Freedom of speech and debate in the legislature shall not be impeached or questioned in any court or place out of the legislature ; and the members of each House shall, in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at Congress, and in going to and returning from it.”

When this section came up before the Convention, on August 10, it was agreed to *nem. con.*, but on August 20 Charles Pinckney introduced the following much broader proposition upon the subject and had it referred to the Committee of Detail :—

“ Each House shall be the judge of its own privileges, and shall have authority to punish by imprisonment every person violating the same, or who, in the place where the legislature may be sitting, and during the time of its session, shall threaten any of its members for anything said or done in the House; or who shall assault any of them therefor; or who shall assault or arrest any witness or other person ordered to attend either of the Houses, in his way going or returning; or who shall rescue any person arrested by their order.”

That committee did not, however, report on this subject, and on September 4 Pinckney moved a clause declaring that each house should be the judge of the privileges of its own members. Randolph and Madison doubted the propriety of it and wanted a postponement, but Gouverneur Morris thought it so plain a case that a postponement could not be necessary. Wil-

son thought the power involved anyhow, and that its insertion might beget doubts as to the powers of other bodies, as courts, etc. "Every court," he said, "is the judge of its own privileges." Madison distinguished between the power of judging of privileges previously and duly established and the effect of the motion, which would give a discretion to each house as to the extent of its privileges. He suggested that it would be better to make provision for ascertaining by *law* the privileges of each house than to allow each house to judge for itself. The proposal did not, however, reach a vote, and the only provision upon the subject which was referred to the Committee on Style was that reported by the Committee of Detail and agreed to by the Convention. They altered the language in several particulars, and reported it as follows:—

"... They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place."

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## ARTICLE I., SECTION 6, CLAUSE 2.

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been increased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

The provision here concerned is to be found in another form in the very early proceedings of the

Convention. The fourth and fifth resolutions of the Virginia plan in relation to the first and second branches respectively of the legislature each contained a clause upon the subject. That as to the first branch read that the members ought "to be ineligible to any office established by a particular state, or under the authority of the United States, except those peculiarly belonging to the functions of the first branch, during the term of service, and for the space of      after its expiration ; to be incapable of re-election for the space of      after the expiration of their term of service, and to be subject to recall." That as to the second branch omitted the provisions incapacitating for re-election and as to being subject to recall, but was otherwise almost identical.

In the discussion of the provision as to the first branch, the clauses making the members incapable of re-election and subject to recall were struck out in committee of the whole on June 12; the clause as to ineligibility was changed, and the whole was then reported from the committee to the Convention in the following form :—

"To be ineligible to any office established by a particular State, or under the authority of the United States, (except those peculiarly belonging to the functions of the first branch,) during the term of service, and, under the national government, for the space of one year after its expiration."

In the House revision, on June 22 and 23, the subject was a good deal discussed, and members evidently thought it of much importance. Madison wanted to amend the provision so as to make members ineligible only to such offices as should be established or their emoluments increased during the member's term of

service, but his motion was defeated. Some minor amendments were, however, carried, and the clause was left to read, "to be ineligible to, and incapable of holding, any office under the authority of the United States (except those peculiarly belonging to the functions of the first branch) during the term of service of the first branch."

In the discussion in committee of the whole on June 12 of the like clause in relation to the second branch, it was changed to read as the provision in regard to the first branch had been made to read by the committee of the whole, and in the House revision on June 26 it was further changed, and was left as follows:—"to be ineligible to, and incapable of holding, any office under the authority of the United States (except those peculiarly belonging to the functions of the second branch) during the term for which they are elected, and for one year thereafter."

The two clauses were later referred to the Committee of Detail in the forms shown, and were inserted by Randolph in his draft in almost the same words. The committee, however, later consolidated them into one clause, applying to both houses, and then reported the following as the ninth section of the sixth article:—

"The members of each House shall be ineligible to, and incapable of holding, any office under the authority of the United States, during the time for which they shall respectively be elected; and the members of the Senate shall be ineligible to, and incapable of holding, any such office for one year afterwards."

This clause came up in the Convention on August 14 and was the subject of a lengthy discussion. Charles Pinckney thought it was degrading to members to make them ineligible to offices. Their election, he said,

showed that they had the confidence of the people, and it was his hope to see the Senate become a nursery of statesmen. He moved an amendment as follows:—"The members of each House shall be incapable of holding any office under the United States, for which they, or any others for their benefit, receive any salary, fees, or emoluments of any kind; and the acceptance of such office shall vacate their seats respectively." Mason ironically proposed to strike out the whole section, and suggested that, "in the present state of American morals and manners, few friends will be lost to the plan by giving premiums to a mercenary and depraved ambition." Gouverneur Morris was opposed to the ineligibility, particularly as regards the officers of the army and navy, and thought it would only stimulate them to despise "those talking lords who dare not face the foe." Let this spirit be aroused at the end of a war," he went on, "before your troops shall have laid down their arms, and, though the civil authority be 'intrenched in parchment to the teeth,' they will cut their way to it." Finally, Butler and Charles Pinckney moved to postpone until it should be seen what powers would be vested in the Senate, when it would be more easy to judge of the expediency of allowing the officers of state to be chosen out of that body, and this was carried.

This matter was not taken up again by the Convention, and consequently went to the Committee on Unfinished Portions, and they reported through Brearly on September 1 recommending that the following be substituted:—

"The members of each House shall be ineligible to any civil office under the authority of the United States, during the time

for which they shall respectively be elected; and no person holding an office under the United States shall be a member of either House during his continuance in office."

When this was taken up in the Convention on September 3, Charles Pinckney again moved the substitute he had offered during the prior discussion. He was strenuously opposed to an absolute ineligibility and wanted to make it a mere incompatibility, so that they could accept the office, but that such acceptance should vacate their seats as members; but his motion was defeated by a vote of eight States to two. King then moved to insert the word "created" before "during," so that members should only be incapable of holding such offices as might be created during their term of service, and Williamson seconded the motion, as he did not see why members should be ineligible to *vacancies* happening during their term. Sherman, Gerry, Randolph, and Mason were all in favor of the ineligibility and of at least as broad a provision as reported by the committee; while Gouverneur Morris, Gorham, Baldwin, and Charles Pinckney were in favor of King's amendment, or of a still further reduction of the ineligibility. King's amendment was lost by an evenly divided vote, and then the Convention adopted, by five States to four, an amendment of Williamson to insert before "during" the words "created, or the emoluments whereof shall have been increased." The last clause rendering any person holding an office under the United States incapable of being a member of either house during his continuance in office was agreed to *nem. con.* The clause now read:—

"The members of each House shall be ineligible to any civil office under the authority of the United States, created, or the

emoluments whereof shall have been increased, during the time for which they shall respectively be elected. And no person, holding any office under the United States, shall be a member of either House during his continuance in office."

In this form the matter was later referred to the Committee on Style, and they reported it as follows:—

"No senator or representative shall, during the time for which he was elected, be appointed to any civil office, under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office."

On September 14, during the comparison of the report from the Committee on Style with the articles agreed on, Baldwin suggested that the language of the section did not extend to offices *created by the Constitution*, and the salaries of which would be created, *not increased*, by Congress at their first session. Hence members of the first Congress might evade the disqualification. He was not seconded.

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#### ARTICLE I., SECTION 7, CLAUSE 1.

All bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

The growth of the provision here concerned is difficult to follow, because the Convention's decisions upon the question varied greatly, and at a very late stage of the proceedings what they had agreed upon was struck out, and there was substituted instead, in a modified form,

matter which had been earnestly pressed by a number of members but the Convention had at an earlier stage disapproved of. The sixth resolution of the Virginia plan contained a clause to the effect that each branch of the legislature ought to possess the right of originating acts, and this provision was approved by the committee of the whole on May 31. But some members thought it very important that money-bills should be left entirely to the control of the first branch, which the Convention had voted on May 31 should be based on proportional representation. Accordingly, on June 13, Gerry moved an exception as to money-bills to the right of each branch to originate acts, and there was quite a discussion of the subject, some members urging that it was unwise to be always following the British constitution when the reason of it does not apply, and that there was no analogy between the House of Lords and the Senate. Sherman said that in Connecticut both branches could originate, and that this had been found safe and convenient, and Charles Cotesworth Pinckney said that the distinction as to money-bills prevailed in South Carolina and had been a source of pernicious disputes between the two houses. It was evaded by informal schedules of amendments handed from the Senate to the other House. Gerry's motion was lost, and the report of the committee of the whole provided by the fifth resolution that "each branch ought to possess the right of originating acts," and contained no limitation on this right. But the advocates of the special rights of the popular branch as to money-bills pressed the matter again during the debates upon the subject of representation (Article I., Section 2, Clause 3), and they succeeded at that time in carry-

ing the provision as a portion of the compromise which was agreed upon.

During these discussions, as has already been shown, there was a time, immediately upon the defeat of the proposition to give the States equal representation in the Senate, when the Convention was about ready to break up. It was suggested and carried, however, that the whole matter of representation be referred to a committee with a view to devising some method of adjustment, and this committee reported on July 5 a compromise which provided for proportional representation in the House and equal representation in the Senate, and also contained provisions as to the origin and control of money-bills, and as to the drawing of money from the treasury, almost identical with those afterwards incorporated into the tenth resolution and quoted below. It seems \* that Mason, Gerry, and some other members from large States set great store by the provisions as to the control of money-bills and so forth, and the members from the small States and some others who wanted a strong government availed themselves of this predilection to secure provisions favoring the small States and in favor of a strong government. Those who pressed for the provision contended that it was an integral part of the compromise by which the small States had secured equal representation in the Senate, while † other members were of opinion that it had been no part of the compromise. The members from the small States maintained, further, that it was a very material concession on their part, as it put money-bills so largely in the control of the House based

\* See foot-note to Elliot, v. 514.

† Elliot, v. 394, 396, 414-20.

on proportional representation, while some of the members from large States denied that it was any concession at all, and some members objected to it in any event as being merely a following of English precedent without reason.

After lengthy discussions, which went almost entirely to other points and have been sufficiently considered in another place (Article I., Section 2, Clause 3), the whole matter involved in this compromise was agreed to as a whole on July 16. One portion of this compromise became the tenth resolution, and this resolution and the fifth resolution, the origin of which has already been traced under this heading, became the origin of the clause of the Constitution with which we are now concerned. These two resolutions, as referred to the Committee of Detail, read as follows:—

“5. *Resolved*, That each branch ought to possess the right of originating acts.

“10. *Resolved*, That all bills for raising or appropriating money, and for fixing the salaries of the officers of the government of the United States, shall originate in the first branch of the legislature of the United States, and shall not be altered or amended by the second branch; and that no money shall be drawn from the public treasury, but in pursuance of appropriations to be originated by the first branch.”

Randolph's committee draft does not give us any aid upon this subject, as it contains a bare memorandum by him, after his provisions for the House of Delegates and Senate, that “the powers belonging peculiarly to the representatives are those concerning money-bills.” The Committee of Detail, however, evidently intended to carry out the provisions of the two resolutions by the fifth section of Article IV. and the twelfth

section of Article VI. of the draft of August 6, which read as follows:—

“ARTICLE IV., SECTION 5. All bills for raising or appropriating money, and for fixing the salaries of the officers of government, shall originate in the House of Representatives, and shall not be altered or amended by the Senate. No money shall be drawn from the public treasury, but in pursuance of appropriations that shall originate in the House of Representatives.”

“ARTICLE VI., SECTION 12. Each House shall possess the right of originating bills, except in the cases before mentioned.”

It will be necessary to follow these two clauses separately. When the first-quoted one came up before the Convention for discussion on August 8, it was struck out after a short discussion, but some members objected to this action as disturbing the compromise entered into, and the next day Randolph expressed his dissatisfaction with the vote and gave notice that he should move a reconsideration.

On August 11, in pursuance of this notice, he accordingly moved to reconsider, and the motion was carried after a short discussion, in which he urged that the large States would require this compensation at least for giving up the point of proportional representation in the Senate. He called upon the smaller States to concur in the measure as the condition by which they had secured the equality of representation in the Senate. Charles Pinckney was of opinion that the section as to money-bills had made no part of the compromise in question. On August 13 the subject was taken up, and debated at much length and with great earnestness. Randolph moved that the clause be altered to read as follows:—

"Bills for raising money for the *purpose of revenue*, or for appropriating the same, shall originate in the House of Representatives; and shall not be so amended or altered by the Senate as to increase or diminish the sum to be raised, or change the mode of levying it, or the object of its appropriation."

Mason thought the amendment must remove all objections, for by specifying *purposes of revenue* it obviated the objection that it might extend to all bills under which money might incidentally arise. By authorizing amendments in the Senate, also, it removed the objection that the Senate could not correct errors. As the Senate is not to represent the people, it would be highly improper to let it tax them. Wilson, Gouverneur Morris, Rutledge, Carroll, and McHenry were opposed generally to limiting the Senate's rights in the matter, while Gerry and Dickinson were more or less in favor of it. Dickinson urged that experience both in England and this country had established the general limitations on the power of the upper house as to money-bills. "Experience," he said, "must be our only guide. Reason may mislead us. It was not reason that discovered the singular and admirable mechanism of the English constitution. It was not reason that discovered, or ever could have discovered, the odd and, in the eyes of those who are governed by reason, the absurd mode of trial by jury. Accidents probably produced these discoveries, and experience has given a sanction to them." Rutledge thought the advocates of the provision were not consistent, for they tell us we ought to be guided by the experience of Great Britain, but propose to depart from it by allowing amendments. The like clauses in our State constitutions, he said, were inserted from a blind adherence

to the British model, and would be omitted if the constitutions had to be written now. The Convention voted by a large majority against the proposition of Randolph, and postponed the subject, when it was pressed by members once more on August 15 in the shape of an amendment to the twelfth section of Article VI. in regard to the right to originate acts.

At a later stage of the proceedings, however, the provisions in question were inserted in a much modified form, and this came about as follows:—The twelfth section of Article VI., which has been quoted and the origin of it given in detail above, came up before the Convention on August 15, and Strong moved to amend it to read as follows:—

“Each House shall possess the right of originating all bills, except bills for raising money for the purposes of revenue, or for appropriating the same, and for fixing the salaries of the officers of the government, which shall originate in the House of Representatives; but the Senate may propose or concur with amendments, as in other cases.”

Mason seconded the motion, and expressed his anxiety to take this power from the Senate, who “could already sell the whole country by means of treaties,” but after a short discussion the matter was postponed. On August 21 Mason again called for its consideration, and said he wished to know how the matter of money-bills was settled before he agreed to any further points; but the Convention defeated his motion, and did not later take the subject up. It went consequently as a postponed part to the Committee on Unfinished Portions, and that committee reported on September 5, recommending to substitute the following for the words of Section 12:—

"All bills for raising revenue shall originate in the House of Representatives, and shall be subject to alterations and amendments by the Senate: no money shall be drawn from the treasury, but in consequence of appropriations made by law."

This was postponed on September 5, and taken up again on the 8th, when the clause as to the Senate's function was altered *nem. con.* by inserting the language used in the constitution of Massachusetts:—"but the Senate may propose or concur with amendments, as on other bills;" and then the clause as so amended was agreed to by nine States to two.\*

There was no debate upon this proposition, which was evidently the carrying out of a compromise agreed upon in the Committee on Unfinished Portions. When the proposed clause had been first reached in the House, on September 5, Gouverneur Morris had it postponed, on the ground that it had been agreed to in the committee on the ground of compromise, and he said that he should feel at liberty to dissent from it if he were not satisfied with certain other parts to be settled. The Convention then went on and agreed to the plan reported September 4—one day earlier than this compromise was reported—for the election of the President by electors appointed by the States in proportion to the whole number of their Representatives and Senators, and it seems† that the bargain was that the small States should be allowed to retain without question the equality voted them in the Senate, and should then agree to the House's larger control of money-bills

\* Elliot, i. 295.

† See Ibid., v. 511, Remarks of Gouverneur Morris. Ibid., 514, for foot-note of Madison.

and also to the greater representation given the larger States in the selection of the President.

The clause was therefore referred to the Committee on Style in the following form :—

“ All bills for raising revenue shall originate in the House of Representatives, but the Senate may propose or concur with amendments as on other bills: no money shall be drawn from the treasury but in consequence of appropriations made by law.”

The committee made some verbal changes, transferred that portion of the section referring to money drawn from the treasury to the seventh clause of Section 9, Article I. (where prohibitions on the federal power and regulations of its administration were placed), and reported the portions of the clause which are here concerned as follows :—

“ All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments, as on other bills.”

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### ARTICLE I., SECTION 7, CLAUSES 2 AND 3.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two-thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House, it shall become a Law. But in all such Cases the Votes of both

Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

The eighth resolution of the Virginia plan was as follows :—

“Resolved, that the executive, and a convenient number of the national judiciary, ought to compose a council of revision, with authority to examine every act of the national legislature, before it shall operate, and every act of a particular legislature before a negative thereon shall be final; and that the dissent of the said council shall amount to a rejection, unless the act of the national legislature be again passed, or that of a particular legislature be again negatived by              of the members of each branch.”

The first portion of this resolution, relating to a council of revision, being taken up on June 4, Gerry doubted whether the judiciary ought to form a part of it, as they will have a sufficient check on encroachments on their own department by their exposition of the laws, which involved a power of deciding on their constitutionality. King agreed with him, and thought the judges ought to be able to expound the law as it

came to them free from the bias of having participated in its formation. Gerry moved to substitute the following :—

*"Resolved,* that the national executive shall have a right to negative any legislative act which shall not afterwards be passed unless by      parts of each branch of the national legislature."

After some unsuccessful efforts to amend this by making the veto absolute or for a term, the blank was filled up with "two-thirds," and it passed.

On June 6 Wilson and Madison again raised the question of joining the judiciary in the power of revision, and moved to amend the above by adding, after "executive," the words "with a convenient number of the national judiciary." Madison argued that the House of Lords, the supreme judicial tribunal, formed one of the branches of the legislature in England. Dickinson thought it would be an improper mixture of powers to join the judiciary in the revision of the laws, and Gerry and King also opposed the motion, which was defeated by eight noes to three ayes.

The subject was accordingly reported to the House by the committee of the whole in the form shown, and the resolution so reported was approved *nem. con.* on July 18, during the revision by the House; but on the 21st an effort was again made to join the judiciary with the executive in the revision of the laws. Wilson moved "that the supreme national judiciary should be associated with the executive in the revisionary power," and the proposition was earnestly pressed by Ellsworth, Madison, and Mason, and opposed by Gorham, Gerry, Strong, Luther Martin, and Rutledge. It was argued that the provision would inspire greater

confidence in the laws, and would give the judiciary a check upon the legislature. To the answer which was made that the judiciary had already a check in the right to hold laws unconstitutional, it was said that many laws might be passed which would be constitutional and yet most ill-advised and wrong. The large influence of the judiciary upon legislation in England by advice to the Executive in the Privy Council and by many of them being members of the legislature was urged. Gerry remarked that a much better provision would be to appoint, as had been done in Pennsylvania, a person or persons of proper skill to draw laws for the legislature. Wilson's proposition was defeated by three to four, and then the resolution giving the Executive a qualified veto was approved *nem. con.*, and the matter was accordingly referred to the Committee of Detail in the following form :—

*“Resolved*, that the national executive shall have a right to negative any legislative act, which shall not be afterwards passed unless by two-thirds parts of each branch of the national legislature.”

Randolph merely inserted a sort of memorandum of this direction in his committee draft and did not draw a clause to carry it out, but the Committee of Detail reported the following provision upon the subject :—

“ARTICLE VI., SECTION 13. Every bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a law, be presented to the President of the United States for his revision. If, upon such revision, he approve of it, he shall signify his approbation by signing it. But if, upon such revision, it shall appear to him improper for being passed into a law, he shall return it, together with his objections against it, to that House in which it shall have originated; who shall enter the objections

at large on their Journal, and proceed to reconsider the bill. But if, after such reconsideration, two-thirds of that House shall, notwithstanding the objections of the President, agree to pass it, it shall, together with his objections, be sent to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of the other House also, it shall become a law. But, in all such cases, the votes of both Houses shall be determined by yeas and nays; and the names of the persons voting for or against the bill shall be entered on the Journal of each House respectively. If any bill shall not be returned by the President within seven days after it shall have been presented to him, it shall be a law, unless the legislature, by their adjournment, prevent its return, in which case, it shall not be a law."

When this came up before the Convention on August 15, Madison again pressed the idea of including the judiciary in the revision of the laws, and moved an elaborate amendment, the purpose of which was to have laws referred to the judges of the Supreme Court so as to require a separate approval by them, as well as by the President. His motion was supported by Wilson and Mercer, and opposed by Charles Pinckney, Gerry, and Sherman. Gouverneur Morris wished that some plan for a more effective check on hasty legislation could be devised, but was not prepared to say what it had best be; he suggested that an absolute negative should be given to the President. Carroll proposed to postpone until the formation of the executive could be decided, but Gorham, Rutledge, and Ellsworth grew very impatient at this, complaining much of the tediousness of the proceedings and how the Convention grew more and more sceptical as it went on. Some, said Gorham, cannot agree to the form before the powers are defined, and others cannot agree to the powers until they see the form. The motion of Madison was defeated; and, on

motion of Williamson, three-fourths was substituted for two-thirds as the fraction of the houses of the legislature needed to override the President; and another amendment was carried giving the President "ten days (Sundays excepted)" to return a bill with his objections, instead of "seven."

Madison suggested that, as the language of the section applied only to bills, it might be avoided by acts under the form of resolutions or votes, and he moved to insert the words "or resolve" after "bill" in the beginning of the section, with an exception as to votes for adjournment, etc. The Convention defeated his motion by three ayes to eight noes, but the next day (August 16) Randolph had thrown much the same idea into a new form, which he proposed as an amendment, and which was at once adopted by nine to one:—

"Every order, resolution, or vote, to which the concurrence of the Senate and House of Representatives may be necessary, (except on a question of adjournment, and in the cases hereinafter mentioned,) shall be presented to the President for his revision; and, before the same shall have force, shall be approved by him, or, being disapproved by him, shall be repassed by the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill."

At the time of the appointment of the Committee on Style, the resolution reported had been approved with an amendment requiring a three-fourths vote instead of a two-thirds vote, and an amendment giving the President "ten days (Sundays excepted)," instead of seven days, to consider a bill; and the resolution just quoted had been added. That committee reported them as follows:—

"Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States. If he approve, he shall sign it; but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their Journal, and proceed to reconsider it. If, after such reconsideration, two-thirds\* of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered; and if approved by two-thirds† of that house, it shall become a law. But in all such cases, the votes of both houses shall be decided by yeas and nays; and the names of the persons voting for and against the bill shall be entered on the Journal of each house respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress, by its adjournment, prevent its return; in which case it shall not be a law.

"Every order, resolution, or vote, to which the concurrence of the Senate and House of Representatives may be necessary, (except on the question of adjournment,) shall be presented to the President of the United States, and, before the same shall take effect, shall be approved by him, or, being disapproved by him, shall be repassed by three-fourths‡ of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill."

In the Convention on September 12, before they began the final revision of the revised draft, Williamson moved to reconsider the clause requiring a three-fourths vote to overrule the negative of the President,

\* Elliot, i. 210. The "two-thirds" is printed in Elliot in the first clause, but is certainly an error: it should read "three-fourths," precisely as the second clause does. The Convention had, as has been shown, struck out the former fraction and inserted the latter in the first clause, while the second did not specify the fraction otherwise than by a reference to the first section.

† Ibid.

‡ Ibid.

in order to strike it out and insert two-thirds. He had himself earlier moved the three-fourths, but had become convinced that two-thirds was the best. Sherman, Gerry, Mason, and Charles Pinckney were in favor of reconsidering, while Gouverneur Morris and Hamilton opposed it. Madison reminded the Convention that, when three-fourths was agreed to, the President was to be elected by the legislature for seven years, and thought that, as the object of the President's revisionary power was both to protect his rights and to prevent factious injustice, it was, on the whole, best to require three-fourths to override him. The reconsideration was agreed to, and two-thirds inserted in place of three-fourths by six ayes to four noes.

On September 13, during the final comparison of the report of the Committee on Style with the articles agreed on, Madison moved to insert "the day on which" between "after" and "it" in the latter part of the first of the preceding clauses, so as to prevent any question whether the day of presenting the bill should be counted as one of the ten days; but Gouverneur Morris said the amendment was unnecessary, as the law knows no fractions of days, and members grew very impatient. The motion was lost.

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#### ARTICLE I., SECTION 8, GENERALLY.

The sixth resolution of the Virginia plan was as follows:—

"Resolved, that each branch ought to possess the right of originating acts; that the national legislature ought to be empowered to enjoy the legislative rights vested in Congress by the Confederation, and moreover to legislate in all cases to

which the separate states are incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual legislation ; to negative all laws passed by the several states contravening, in the opinion of the national legislature, the Articles of Union, or any treaty subsisting under the authority of the Union ; and to call forth the force of the Union against any member of the Union failing to fulfil its duty under the articles thereof."

The several clauses of this resolution (except the last, as to using force against members of the Union) were agreed to on May 31 with but little dissent. The words "or any treaties subsisting under the authority of the Union" were possibly not in the resolution as introduced by Randolph, but added on May 31 on motion of Franklin. The clause as to using force against members of the Union was postponed on motion of Madison, who hoped the system might be so framed as to render it unnecessary.

On June 8 Charles Pinckney and Madison moved,\* in lieu of the words "to negative all laws passed by the several states, contravening, in the opinion of the national legislature, the articles of union, or any treaty subsisting under the authority of the Union," to insert "to negative all laws which to them shall appear improper." They urged the motion strongly as the only way to keep the States in due subordination and to prevent those constant infractions of national laws, and even of foreign treaties, which had been so usual. Pinckney's speeches show † that his draft contained the same clause he now wanted to substitute for the one contained in the resolution. Wilson and Dickinson supported the motion, while Williamson, Gerry,

\* See also Defeated Proposals.

† Moore's American Eloquence, i. 365, 366.

Sherman, Bedford, and Butler opposed it. Sherman thought the cases in which the negative ought to be exercised might be defined, while Gerry said he could not see the extent of such a power, and was against every unnecessary one. He thought a remonstrance against unreasonable acts of the States would restrain them, and that if it should not, force might be resorted to. Bedford thought that such a provision would be very harmful to the small States. The motion was lost by seven noes to three ayes.

The resolutions upon the powers of Congress had now been developed into the following, in which form they were reported from the committee of the whole :—

“5. *Resolved*, That each branch ought to possess the right of originating acts.

“6. *Resolved*, That the national legislature ought to be empowered to enjoy the legislative rights vested in Congress by the Confederation ; and moreover, to legislate in all cases to which the separate states are incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual legislation ; to negative all laws passed by the several states contravening, in the opinion of the national legislature, the Articles of Union or any treaties subsisting under the authority of the Union.”

On June 26, in the revise by the Convention, the fifth resolution above was agreed to unanimously, but the next day, on motion of Rutledge, the consideration of the powers to be conferred on Congress was postponed in order to take up the question of the basis of representation in the two branches of Congress, and the Convention then entered upon the very long struggle over this point, which has been detailed in another place (Article I., Section 2, Clause 3). It was not until July 16 that they returned to the subject of the

powers of Congress. On that day the first clause of the sixth resolution of the committee of the whole, "That the national legislature ought to possess the legislative rights vested in Congress by the Confederation," was soon unanimously approved.

The next clause, "and moreover to legislate in all cases to which the separate states are incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual legislation," met with some question, and on July 17 Sherman moved this instead:—"to make laws binding on the people of the United States in all cases which may concern the common interests of the Union; but not to interfere with the government of the individual states, in any matters of internal police which respect the government of such states only, and wherein the general welfare of the United States is not concerned." His motion was lost. In explanation of his general idea, Sherman read an enumeration of powers, including that of levying taxes on trade, but Gouverneur Morris called his attention to his omission of any power of *direct* taxation, which he thought essential, in order to avoid recurring to quotas and contributions. Upon the defeat of Sherman's proposition Bedford moved the following language:—"and moreover to legislate in all cases for the general interests of the Union, and also in those to which the states are severally incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual legislation," and this amendment was approved.

The next clause, "to negative all laws passed by the several states, contravening, in the opinion of the national legislature, the Articles of Union, or any treaties

subsisting under the authority of the Union," was discussed for a short time on July 17 and defeated. Gouverneur Morris thought it would disgust all the States, and that it was unnecessary if sufficient legislative authority were given to the general government. A law that ought to be negatived, he added, "will be set aside in the judiciary department, and, if that security should fail, may be repealed by a national law;" and Sherman agreed with the view that the judiciary would set aside\* such a law. Luther Martin asked whether all the laws of the States were to be sent up to the general legislature before they should be permitted to operate. Madison thought the provision essential, and answered the view of Morris and Sherman by saying that the judiciary were too dependent on the legislatures as well as too slow in their operations.

Immediately on the defeat of this clause Luther Martin proposed a resolution which was evidently taken in the main from the sixth resolution in the Paterson plan, which he had aided in drafting. It passed unanimously and became Resolution No. 7.

Thus the fifth and sixth resolutions of the committee of the whole had now been approved and enlarged so as to read as follows:—

"5. *Resolved*, That each branch ought to possess the right of originating acts.

"6. *Resolved*, That the national legislature ought to possess the legislative rights vested in Congress by the Confederation; and, moreover, to legislate in all cases for the general interests of the Union, and also in those to which the states are separately incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual legislation.

\* On this subject, see Defeated Proposals: Negative on State laws.

“7. *Resolved*, That the legislative acts of the United States, made by virtue and in pursuance of the Articles of Union, and all treaties made and ratified under the authority of the United States, shall be the supreme law of the respective states, as far as those acts or treaties shall relate to the said states, or their citizens and inhabitants; and that the judiciaries of the several states shall be bound thereby in their decisions, any thing in the respective laws of the individual states to the contrary notwithstanding.”

In this form these resolutions were referred to the Committee of Detail, and there were also referred to them the New Jersey resolutions. The third of these provided that, whenever the requisitions of Congress should not be complied with, they should have power to direct the collection thereof, and to pass acts for this purpose, provided that                    States should consent to such law; and the second provided as follows:—

“*Resolved*, That, in addition to the powers vested in the United States in Congress by the present existing Articles of Confederation, they be authorized to pass acts for raising a revenue, by levying a duty or duties on all goods or merchandises of foreign growth or manufacture, imported into any part of the United States; by stamps on paper, vellum, or parchment; and by a postage on all letters or packages passing through the general post-office;—to be applied to such federal purposes as they shall deem proper and expedient: to make rules and regulations for the collection thereof; and the same, from time to time, to alter and amend in such manner as they shall think proper: to pass acts for the regulation of trade and commerce, as well with foreign nations as with each other;—provided that all punishments, fines, forfeitures, and penalties, to be incurred for contravening such acts, rules, and regulations, shall be adjudged by the common-law judiciaries of the state in which any offence contrary to the true intent and meaning of such acts, rules, and regulations, shall have been committed or perpetrated, with liberty of commencing in the first instance all suits and

prosecutions for that purpose in the superior common-law judiciary in such state; subject, nevertheless, for the correction of all errors, both in law and fact, in rendering judgment, to an appeal to the judiciary of the United States."

From these outlines the committee developed the various powers which were recommended in the draft they reported on August 6 to be conferred on Congress. It will be necessary now to follow these clauses *seriatim*, remembering, always, that they were intended to be the carrying out of the indications contained in the resolutions just considered. It should be noted here that it was again urged in a modified form at a later stage of the proceedings to confer on Congress the power to negative State laws, but this is sufficiently considered among the Defeated Proposals.

The draft which Randolph prepared for use in the Committee of Detail shows that he sketched with care the powers to be conferred on Congress under a heading which began :—"The following are the legislative powers; with certain exceptions and under certain restrictions." Numbers of the powers recommended in the draft reported on August 6 are to be found in this sketch.

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#### ARTICLE I., SECTION 8, CLAUSE 1.

The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

Charles Pinckney's speeches \* show that his draft conferred on the general government complete power

\* Moore's American Eloquence, i. 366, 367.

to levy such imposts and duties for the use of the United States as Congress should think necessary and expedient, but he seems to have required a two-thirds vote in these cases; he said that he thought this power would remove that annual dependence on the States which they then experienced. In the Committee of Detail we find that the first power contained in Randolph's draft was, "1. To raise money by taxation, unlimited as to sum, for the past and future debts and necessities of the union, and to establish rules for collection;" but this he made subject to the exception of "no taxes on exports," and to the following restrictions:—"1. Direct taxation proportional to representation. 2. No capitation tax which does not apply to all inhabitants under the above limitation. 3. No indirect tax which is not common to all." These provisions are, moreover, marked on the margin "agrd," as if they had been submitted to the members of the committee at some time; but the following is the form in which they finally reported the matter:—

"ARTICLE VII., SECTION 1. The legislature of the United States shall have the power to lay and collect taxes, duties, imposts, and excises;"

When this came up before the Convention on August 16, there was some slight discussion as to the exact meaning of the words duties and imposts, and then Mason moved a proviso to the clause as follows:—"provided, that no tax, duty, or imposition, shall be laid by the legislature of the United States on articles exported from any State;" and he said he hoped the Northern States did not mean to deny the Southern States this security. He was unwilling to trust to its

being done in a future article (referring to a future section (4) of the same article), and professed his jealousy for the productions of the Southern or staple States. Williamson, Gerry, Mercer, Sherman, and Carroll supported the motion, while Gouverneur Morris, Madison, and Wilson were against it. Sherman thought the matter sufficiently provided for already in the later section, and was against the proviso here, because it would derange the plan. It was finally agreed that the matter should lie over for the place in which the exception stood in the report, and the clause as reported was agreed to.

On August 21 Luther Martin moved, in the form of an amendment to Article VII., Section 3,\* a provision to require that direct taxes should be first apportioned among the States in accordance with the rule decided on, and that then requisitions should be made on the States for their respective quotas, and that laws for the collection of the same should only be enacted in case of the States' neglect to comply; but only New Jersey voted in favor of the proposal.

On August 23 the clause as to the power to lay and collect taxes was amended to read as follows, the portion prefixed being temporarily transferred here from another part of the Constitution, where it had originated and where it found its permanent lodgement (Article VI, Clause 1):—"The legislature *shall* fulfil the engagements and discharge the debts of the United States; and shall have the power to lay and collect taxes, duties, imposts, and excises." This amended

\* "The proportions of direct taxation shall be regulated by the whole number of white . . . and three-fifths of all other persons," etc.

clause was agreed to, but Butler gave notice of a motion to reconsider, lest it should compel payment to the "blood-suckers" who speculated, as well as to those who had bled for their country.

According to a vote on August 24, the Convention proceeded on August 25 to reconsider the portion thus transferred to this clause as to fulfilling the engagements of the United States. Mason objected to its being imperative, and thought it might be impossible. He thought it would beget speculations, and argued that there was a great difference between original holders and those who had fraudulently purchased in the pestilential practice of stock-jobbing. He did not mean to include those who had bought in the open market. He feared, also, that the word *shall* might extend to all the old Continental paper. After a short discussion, Randolph proposed to make the clause read:—"All debts contracted, and engagements entered into, by or under the authority of Congress, shall be as valid against the United States, under this Constitution, as under the Confederation," and this was adopted by ten States to one.

Sherman then suggested the necessity of connecting with the clause in the latter part of this section for laying taxes, duties, etc., an express provision for the object of the old debts, and accordingly moved to add to its end "for the payment of said debts, and for the defraying the expenses that shall be incurred for the common defence and general welfare." The Convention, however, thought this unnecessary, and disagreed to it.

On August 18 Charles Pinckney had introduced into the Convention a series of resolutions, and had

them referred to the Committee of Detail ; among them was a suggestion that the committee be directed "to prepare a clause, or clauses, for restraining the legislature of the United States from establishing a perpetual revenue." A like suggestion of Mason of August 18 was also referred to the same committee. The committee reported on August 22 recommending that at the end of the first clause of the first section of the seventh article, after the words "shall have power to lay and collect taxes, duties, imposts, and excises," the following should be added :—"for payment of the debts and necessary expenses of the United States ; provided that no law for raising any branch of revenue, except what may be specially appropriated for the payment of interest on debts or loans, shall continue in force for more than        years." This proposal was not called up or acted on, so it went to the Committee on Unfinished Portions ; and on September 4 Bearly reported from it a recommendation that the first clause of the first section of Article VII. should read :—"the legislature shall have power to lay and collect taxes, duties, imposts, and excises ; to pay the debts, and provide for the common defence and general welfare, of the United States ;" and this was at once agreed to *nem. con.*, and later referred to the Committee on Style.

This clause had—as has been seen—been preceded by the provision that "the legislature *shall* fulfil the engagements and discharge the debts of the United States ;" and this was also referred to the Committee on Style. They transferred it back to that portion (Article VI., Clause 1) from which it had been for a time transferred here, and then reported the portions of the clause here concerned as follows :—

"SECTION 8. [The Congress] . . . They shall have power to lay and collect taxes, duties, imposts, and excises; to pay the debts, and provide for the common defence and general welfare, of the United States;"

During the comparison of the report of the Committee on Style with the articles agreed on, on September 14, on motion of Gouverneur Morris, the following words were unanimously added to this clause :—\* "but all duties, imposts, and excises shall be uniform throughout the United States." This was not a new idea of Morris's, but merely a transfer to this clause of matter which had originated in another part of the Constitution, during the discussions which resulted in the prohibition (Article I., Section 9, Clause 6) against giving any preference to one port over another. On August 25 McHenry and Charles Cotesworth Pinckney had moved a resolution, a portion of which read, "all duties, imposts, and excises, prohibitions or restraints, laid or made by the legislature of the United States, shall be uniform and equal throughout the United States," and this was at once referred to a special committee of one member from each State, to which were also referred other resolutions introduced the same day in regard to ports of entry and the giving of preferences to one port over another. This committee consisted of Langdon, Gorham, Sherman, Dayton, Fitzsimons, Read, Carroll, Mason, Williamson, Butler, and Few; and from it Sherman reported on August 28 recommending certain provisions, among which was to insert after the fourth section † of the seventh article a provision as to not giving

\* Elliot, i. 310, 311; v. 543.

† The position where this clause was recommended to be inserted is not so given in the text at page 483 of v., Elliot; but

preference to one port over another (see Article I., Section 9, Clause 6), and the following words:—"and all tonnage, duties, imposts, and excises, laid by the legislature, shall be uniform throughout the United States." The latter clause was agreed to on August 31, after the word "tonnage" was struck out as being comprehended in "duties," but it seems to have been forgotten by the Committee on Style; it was no doubt the source of Gouverneur Morris's motion.

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## ARTICLE I., SECTION 8, CLAUSE 2.

To borrow Money on the credit of the United States.

In the draft prepared by Randolph for use in the Committee of Detail, he did not insert any words distinctly conferring the power here concerned; but Rutledge added a memorandum on the margin, "Power to borrow money," and the committee reported a clause, "To borrow money and emit bills on the credit of the United States."

When this clause came up before the Convention, on August 16, Gouverneur Morris moved to strike out the words "and emit bills on the credit of the United States." He thought that if the United States had credit such bills would be unnecessary; and if it had not they would be unjust and useless. Madison thought it would be enough to prohibit their being made a tender. Gorham was for striking out, but against a pro-

that it was intended as above written is made perfectly clear at page 502.

hibition, thinking that if the words stood they might lead to the measure. Mason thought Congress would not have the power unless it were expressed, and, much as he hated paper money, was yet unwilling to tie the hands of the legislature. He remarked that the late war could not have been carried on if there had been such a prohibition. Ellsworth thought this a favorable moment to bar the door against paper money; Read, that the words, if not struck out, would be "as alarming as the mark of the beast in Revelation;" and Langdon would rather reject the whole plan than retain the three words "and emit bills." Mercer was a friend to paper money, and opposed to prohibiting it. Randolph agreed with Mason's view. Wilson thought that removing the possibility of paper money would have a most salutary influence on the credit of the United States. The words were struck out by nine States to two, and the clause was then agreed to *nem. con.*, and it went, therefore, to the Committee on Style in the words "to borrow money." They reported it in this part of the Constitution in the form below:—

"To borrow money on the credit of the United States."

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### ARTICLE I., SECTION 8, CLAUSE 3.

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.

Charles Pinckney's speeches \* seem to show that his draft conferred on Congress complete power to regulate commerce, but required a two-thirds vote. In the draft

\* Moore's American Eloquence, i. 366, 367.

made for use in the Committee of Detail, Randolph wrote among the legislative powers "2. to regulate commerce," and to this Rutledge added the words "both foreign and domestick," and later added, as a marginal memorandum, the words "Indian affairs." Randolph made this power, however, subject to the restriction that "1. a navigation act shall not be passed, but with the consent of 2-3rds of the members present of the Senate and the like No. of the house of representatives;" and to the following exceptions :—"1. No duty on exports: 2. no prohibition on the importations of such inhabitants or people as the several states think proper to admit: 3. no duties by way of such prohibition." The committee reported a power in the following language :—"to regulate commerce with foreign nations, and among the several states :" and this was approved by the Convention on August 16 without discussion.

On August 29, during the debates over the question whether to confer generally the power to pass a navigation act or to limit it by requiring a two-thirds vote (Article I., Section 9, Clauses 1, 4, and 5), Charles Pinckney moved to provide that "no act of the legislature for the purpose of regulating the commerce of the United States with foreign powers, or among the several states" should be passed without the assent of two-thirds of each House, but the proposal was defeated.

In the resolutions introduced by Madison on August 18 and referred to the Committee of Detail was a clause suggesting that power be given to the legislature "to regulate affairs with the Indians, as well within as without the limits of the United States." This committee reported on August 22, recommending that at

the end of the second clause, first\* section, seventh article, the following words be added :—"and with Indians within the limits of any state, not subject to the laws thereof." This report was not, however, called up or acted on, so the matter went to the Committee on Unfinished Portions, and they reported on September 4, recommending to add to the end of the second clause of Section 1 of Article VII. the words "and with the Indian tribes." This was at once agreed to *nem. con.* on the same day, September 4.

In this shape the matter went to the Committee on Style, and they reported it in this part of the Constitution in nearly identical words as follows :—

"To regulate commerce with foreign nations, among the several states, and with the Indian tribes."

On September 13, during the comparison by the Convention of the report of the Committee on Style with the articles agreed on, the word "and" was inserted † after the word "nations."

It is, moreover, worthy of note that on September 15, during the discussion of the prohibition on the States (Article I., Section 10, Clauses 2 and 3) from laying imposts, tonnage, etc., without the consent of Congress, a discussion arose which bore to some extent on the meaning of the power to regulate commerce. Gouverneur Morris expressed the opinion that the States were not restrained by the Constitution from laying tonnage duties, but Madison thought this depended upon the extent of the power to regulate com-

\* The texts of Elliot (i. 256 and v. 462) read *second* section, but this is evidently an error.

† Elliot, i. 311.

merce, which is a “vague term, but seems to exclude this power of the states.” The States could at least certainly be restrained by treaty. He was more and more convinced that the regulation of commerce was indivisible, and ought to be under one authority. Sherman did not fear a concurrent authority upon the subject, as that of the United States was to control in case of interfering regulations. Langdon insisted that the States ought to have nothing to do with the matter.

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#### ARTICLE I., SECTION 8, CLAUSE 4.

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States.

Charles Pinckney's speeches \* show that his draft conferred on the federal government the exclusive power to declare on what terms citizenship and naturalization should be extended to foreigners, and he referred to the inconveniences from the provision that the citizens of one State were entitled to the privilege of citizens in each State, and the consequent admission of foreigners in every State when admitted in any one State. The younger States, he said, encourage foreigners to come, while the older ones do not want to admit them so soon. The eighth resolution of the New Jersey plan provided upon the same subject that “the rule for naturalization ought to be the same in every state.”

\* Moore's American Eloquence, i. 368.

Possibly influenced by these provisions, Randolph inserted in his committee draft a legislative power "to regulate naturalization," and the Committee of Detail reported a clause "to establish a uniform rule of naturalization throughout the United States," which was agreed\* to on August 16 without discussion.

On August 29, when the article in regard to each State giving full faith to the public acts and judicial proceedings, etc., of other States came up before the Convention, Charles Pinckney moved to commit it with the following proposition of a power to Congress:—"to establish uniform laws upon the subject of bankruptcies, and respecting the damages arising on the protest of foreign bills of exchange:" and the motion was carried, and Rutledge, Randolph, Gorham, Wilson, and Johnson were appointed the committee. They reported on September 1, by Rutledge, a recommendation to insert the following words in Article VII., Section 1,† immediately after the words as to a uniform rule of naturalization throughout the United States:—"to establish uniform laws on the subject of bankruptcies."

On September 3 the Convention took up this subject. Sherman remarked that bankruptcies were in some cases punishable by death in England, and he did not choose to grant a power by which that might be done; but Gouverneur Morris said he would agree to it, because he saw no danger of abuse of the power

\* Elliot, i. 245. This vote is not given in Elliot's Debates.

† Elliot, i. 281: v. 503. The place at which the insertion was intended to be made is not clear in the text, but there can be no doubt, from the later treatment of the matter, that this was the place intended.

by the legislature of the United States: and the clause was agreed to with Connecticut alone in the negative.

These powers as to naturalization and bankruptcies were later referred to the Committee on Style as two separate powers, and they consolidated them into one clause as follows:—

“To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies, throughout the United States.”

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### ARTICLE I., SECTION 8, CLAUSE 5.

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures.

Charles Pinckney’s speeches \* show that his draft conferred on the federal authorities the exclusive right of coining money, and Randolph inserted in his committee draft a power “to regulate coinage;” this was, however, cancelled by Rutledge, and the words “the exclusive right to coin money” were interlined. Rutledge also added on the margin the words “to regulate Weights and Measures.” The committee reported three powers as follows separately:—

“To coin money.

“To regulate the value of foreign coin.

“To fix the standard of weights and measures.”

These clauses were agreed to on August 16 without discussion, and were later referred to the Committee on Style, and reported back by them as follows:—

“To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures.”

\* Moore’s American Eloquence, i. 367.

## ARTICLE I., SECTION 8, CLAUSES 6 AND 10.

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States. . . .

To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

Randolph's committee draft contained a power "to declare the law of piracy, felonies and captures on the high seas, and captures on land," and Rutledge interlined the exclusive right of coining money "and of declaring the crime and punishment of counterfeiting it." The provisions reported by the committee on these subjects were as follows:—

"To declare the law and punishment of piracies and felonies committed on the high seas, and the punishment of counterfeiting the coin of the United States, and of offences against the law of nations."

When this clause came up before the Convention on August 17, the words "and punishment" were struck out on motion of Madison, though some thought this might be unwise, considering the strict rule of construction in criminal cases. Next, on motion of Gouverneur Morris, the clause was changed to read "to punish piracies," and then again amended, at the suggestion of Madison and Randolph, so as to read "to define and punish." Wilson thought felonies sufficiently defined anyhow, but Madison and others thought otherwise. Finally, the whole clause was amended, on motion of Ellsworth, and then agreed to as follows:—"to define and punish piracies and felonies committed on the high seas, counterfeiting the securities and current coin of the United States, and

offences against the laws of nations," and in this form it was referred to the Committee on Style. They broke it into two separate clauses, and reported it as follows :—

"To provide for the punishment of counterfeiting the securities and current coin of the United States. . . .

"To define and punish piracies and felonies committed on the high seas, and punish offences against the law of nations."

On September 14, during the comparison of the report of the Committee on Style with the articles agreed on, Gouverneur Morris moved to strike out the word "punish" before "offences against the law of nations," so as to let these be definable as well as punishable. Wilson hoped the amendment would not be made, for to pretend to *define* the law of nations, which depends on the authority of all the civilized nations of the world, would have a look of arrogance that would make us seem ridiculous. Gouverneur Morris replied that it was correct to speak of *defining* the law of nations, as it was too vague to be a rule, and his motion was carried by six ayes to five noes.

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#### ARTICLE I., SECTION 8, CLAUSE 7.

To establish Post Offices and post Roads;

Charles Pinckney stated in his speeches \* that the eighth article of his draft only varied from the existing one on the same subject (*i.e.*, in the Articles of Confederation) by giving the federal government a

\* Moore's American Eloquence, i. 367.

power to exact as much postage as would raise a revenue: and Randolph's committee draft conferred a power "to establish post-offices." In this form, also, the committee reported it. When the provision came up in the Convention, on August 16, Gerry moved to add the words "and post-roads," and the amendment was carried by six to five, and the clause as amended was then agreed to.

On August 18 Charles Pinckney suggested to confer on Congress the power "to regulate stages on the post-roads," and had this referred to the Committee of Detail, and Gerry apparently moved, on the same day, and had referred to the same committee, a motion "to provide for stages on post-roads," but the committee did not report, nor were the suggestions brought up again.

The Committee on Style reported this power in the same form in which it had been referred to them:—"to establish post-offices and post-roads."

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#### ARTICLE I., SECTION 8, CLAUSE 8.

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

Charles Pinckney's speeches\* show that his draft conferred power on the general government to secure to authors the exclusive right to their performances and discoveries, but Randolph's draft contained nothing

\* Moore's American Eloquence, i. 369.

upon the subject, nor did the Committee of Detail insert any such provision in the draft of August 6.

On August 18, however, Madison introduced and had referred to the Committee of Detail a series of powers to be conferred on the Congress, among which were the following:—

“To secure to literary authors their copyrights for a limited time.”

“To encourage, by proper premiums and provisions, the advancement of useful knowledge and discoveries.”

On the same day, also, Charles Pinckney had referred to the same committee powers suggested by him, among which were the following:—

“To grant patents for useful inventions.

“To secure to authors exclusive rights for a certain time.

“To establish public institutions, rewards, and immunities, for the promotion of agriculture, commerce, trades, and manufactures.”

The Committee of Detail did not report on these suggestions, and they accordingly went to the Committee on Unfinished Portions, and they reported on September 5, recommending to insert before the last clause of Section 1, Article VII., the following:—“to promote the progress of science and the useful arts, by securing for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries:” and this was soon agreed to *nem. con.*

In this form this matter was later referred to the Committee on Style, and they reported it as follows:—

“To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries.”

## ARTICLE I., SECTION 8, CLAUSE 9.

To constitute Tribunals inferior to the supreme Court;

Charles Pinckney's speeches\* show that his draft conferred power on Congress to establish federal courts for certain specified purposes. The ninth resolution of the Virginia plan also, upon the subject of the judiciary, provided for inferior tribunals, which should hear and determine cases in the first instance; and the Convention voted on June 4 that the judiciary should consist of one supreme tribunal "and of one or more inferior tribunals," and then amended this to read "and of inferior tribunals." On June 5, however, on motion of Rutledge, these words were struck out of the resolution (see Article III. generally), whereupon, on the insistence of Dickinson, Wilson, and Madison on the importance of at least the *power* to establish such tribunals in case of need, the resolution was amended by adding the words "that the national legislature be empowered to institute inferior tribunals." In this form the matter was reported by the committee of the whole.

On July 18 the subject came up again in the Convention itself, and the power to institute inferior tribunals was opposed by Butler and Luther Martin, and supported by Gorham, Randolph, and Gouverneur Morris. Randolph observed that there were already federal courts in the States, and that no objections were made. Sherman was willing to grant the power to establish the courts, but thought that the State tribunals should be used whenever possible. The clause

\* Moore's American Eloquence, i. 367.

was approved *nem. con.*, after but a short discussion, and was referred to the Committee of Detail as the fifteenth resolution of the Convention. Randolph's draft in effect contained this provision under the judiciary, but did not insert it among the legislative powers. The Committee of Detail, however, embodied it among the powers of Congress as follows:—"to constitute tribunals inferior to the supreme court;" and when this came up before the Convention, on August 17, it was agreed to without discussion. The Committee on Style made no change.

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#### ARTICLE I., SECTION 8, CLAUSE 10.

To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

See Article I., Section 8, Clauses 6 and 10, where this has already been considered.

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#### ARTICLE I., SECTION 8, CLAUSE 11.

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

This clause seems to have originated in the Committee of Detail; but it is to be observed that Pinckney's draft, as printed in Elliot, provided by Article VII. that "the Senate shall have the sole and exclusive power to declare war." Randolph's draft conferred a legislative power to "make war, raise armies, and

equip fleets," and another "to declare the law of piracy, felonies and captures on the high seas, and captures on land;" and the Committee of Detail reported among the powers of the legislature of the United States one "to make rules concerning captures on land and water," and another "to make war." The first was agreed to by the Convention without discussion, when it was reached, on August 17.

When the power "to make war" came up on August 17, Charles Pinckney was against leaving this power to the legislature, as its proceedings are too slow. He thought the Senate would be the best depository, and commented on the strangeness of one authority making war and another peace. Butler thought the same objection of slowness would hold as to the Senate. Madison and Gerry moved to insert "declare" instead of "make," thus leaving it to the executive to repel sudden attacks; but Sherman thought this would narrow it too much, and that the clause was right as it stood. The motion to insert "declare" for "make" prevailed, and a motion to add "and peace" after "war" was defeated. The clause as amended, "to declare war," was then agreed to.

On August 18 Charles Pinckney introduced and had referred to the Committee of Detail a series of new powers he proposed to give to Congress: among them was one "to grant letters of marque and reprisal;" and on the same day Gerry remarked that something ought to be inserted concerning letters of marque which he thought not included in the power of war, and his proposal was also referred. The committee did not report on these proposals, so they went to the Committee on Unfinished Portions, and they reported on September 5,

recommending to add, immediately after "to declare war," the words "and grant letters of marque and reprisal;" and this was at once agreed to *nem. con.*

These clauses went, therefore, to the Committee on Style as two separate powers, as follows:—

"to make rules concerning captures on land and water.

"to declare war and grant letters of marque and reprisal."

The committee merely transferred them, consolidated them into one clause, and then reported as follows:—

"To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water."

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#### ARTICLE I., SECTION 8, CLAUSE 12.

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

Charles Pinckney's speeches\* show that his draft gave Congress the unqualified power to raise troops in peace or war in any manner. Randolph's committee draft contained a legislative power "to raise armies," and these same words were contained in the draft reported on August 6. When they came up before the Convention on August 18, the words were altered, on motion of Gorham, to read, "to raise and support armies," and then agreed to *nem. con.*

On August 18 Charles Pinckney introduced a series of resolutions and had them referred to the Committee of Detail, among which was a clause directing the committee to prepare a clause "for restraining the legislature of the United States from establishing a perpetual

\* Moore's American Eloquence, i. 366.

revenue." And on the same day Mason said a few words about "the necessity of preventing the danger of perpetual revenue, which must, of necessity, subvert the liberty of any country," and later moved that the Committee of Detail prepare a clause for restraining perpetual revenue, which was agreed to *nem. con.* Gerry also, on August 18, during the discussion of the above clause as to raising armies, observed that the clause contained no check against standing armies in time of peace; he said he could not consent to this, and proposed a provision that not more than two or three thousand troops should be kept up in time of peace, and later in the same day he moved a proviso to that general effect. Members asked, however, whether no troops were to be raised until an attack was made, and reminded him that the best protection was to be found in Mason's motion to limit the appropriations of revenue. The proviso was then disagreed to *nem. con.* Again, on August 20, Charles Pinckney introduced and had referred another set of resolutions, among which were the following: "No troops shall be kept up in time of peace, but by consent of the legislature.

"The military shall always be subordinate to the civil power, and no grants of money shall be made by the legislature for supporting military land forces for more than one year at a time." None of these suggestions was reported on by the Committee of Detail, so they went to the Committee on Unfinished Portions, and they reported on September 5, recommending to add to the clause "to raise and support armies" a provision, "but no appropriation of money to that use shall be for a longer term than two years."

Gerry objected to this that it permitted appropriations to an army for two years instead of one, and that it implied that there was to be a standing army, which he was opposed to as dangerous to liberty; in any case there ought to be a restriction on its number and duration. Sherman replied that appropriations were not required, but only allowed to be for two years, but he should himself like to see a restriction on the number and continuance of an army in time of peace. The clause was then agreed to *nem. con.*

The Committee on Style reported this clause in the same form in which it had been referred to them, as follows:—

“To raise and support armies,—but no appropriation of money to that use shall be for a longer term than two years.”

On September 14, during the comparison by the Convention of the report of the Committee on Style with the articles agreed upon, Mason remarked that he was sensible that an absolute prohibition of standing armies in time of peace might be unsafe, but still wished to insert something guarding against them; he moved, therefore, with this view, to insert before the power “to provide for organizing, arming, and disciplining the militia” the words “and that the liberties of the people may be better secured against the danger of standing armies in time of peace.” Randolph and Madison supported it, but Gouverneur Morris, Charles Pinckney, and Bedford were against it, and it was lost by nine noes to two ayes.

**ARTICLE I., SECTION 8, CLAUSE 13.**

To provide and maintain a Navy;

It has already been seen that Randolph conferred a legislative power "to make war and raise armies;" to these words Rutledge has added in the draft "and equip fleets," and in the report of the Committee of Detail this had grown to be "to build and equip fleets." When it came up before the Convention on August 18, the language was changed so as to read "to provide and maintain a navy," as a more convenient definition, and was then agreed to *nem. con.*, and this was later referred to the Committee on Style, and reported by them in the same form.

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**ARTICLE I., SECTION 8, CLAUSE 14.**

To make Rules for the Government and Regulation of the land and naval Forces;

Randolph's committee draft contained a legislative power "to enact articles of war," but this was not incorporated into the draft the committee reported, and the clause here concerned arose later. Immediately after the Convention had approved, on August 18, of the power "to provide and maintain a navy," a power was on motion added from the Articles of Confederation "to make rules for the government and regulation of the land and naval forces," and this was later reported in precisely the same form by the Committee on Style.

## ARTICLE I., SECTION 8, CLAUSE 15.

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

Charles Pinckney's speeches \* seem to show that he gave an express power in his draft to order the militia of one State into another State. Randolph wrote in his committee draft, among the legislative powers, "to draw forth the militia or any part or to authorize the executive to embody them;" but this was cancelled by Rutledge, and the following inserted in its place:—"to make laws for calling forth the aid of the militia to execute the Laws of the Union, to inforce Treaties, to repel Invasions and suppress internal Commotions." The committee reported as follows in the draft of August 6:—

"To call forth the aid of the militia, in order to execute the laws of the Union, enforce treaties, suppress insurrections, and repel invasions;"

When this was first reached, on August 20, it was postponed until a report should be made from the grand committee of eleven upon the power of the militia referred to them (see Article I., Section 8, Clause 16); but it was called up again on August 23, after that committee had reported, and Gouverneur Morris moved to strike out the words "enforce treaties" as being superfluous, since treaties were to be laws. This was agreed to *nem. con.* He then moved to amend the clause to read "to provide for calling forth the militia, to execute the laws of the Union, suppress

\* Moore's American Eloquence, i. 367, 368.

insurrections, and repel invasions ;” and this, also, was agreed to *nem. con.*, and the clause as amended then agreed to *nem. con.*

The Committee on Style reported it as follows :—

“To provide for the calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions.”

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### ARTICLE I., SECTION 8, CLAUSE 16.

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress ;

Charles Pinckney’s speeches\* show that his draft gave the federal powers the exclusive right to establish regulations for the government of the militia, and Randolph’s committee draft conferred a legislative power “to regulate the force permitted to be kept in each State ;” but the draft reported on August 6 contained nothing upon the subject. On August 18, however, Mason introduced the subject of regulating the militia, and thought such a power necessary to be given the general government. He supposed there would be no standing army in time of peace, and considered it impossible that thirteen States would agree upon any one system. He suggested that, if they would not give up the power over the whole, they might do so over a part as a select militia. He accord-

\* Moore’s American Eloquence, i. 367, 368.

ingly moved that an additional power be conferred on Congress "to regulate the militia," and later in the same day varied this so as to read "to make laws for the regulation and discipline of the militia of the several States, reserving to the States the appointment of the officers."

Ellsworth thought the proposal went too far, and proposed the following:—"that the militia should have the same arms and exercise, and be under rules established by the general government when in actual service of the United States; and when States neglect to provide regulations for militia, it should be regulated and established by the legislature of the United States." Dickinson rather approved of giving the general government the control of a part of the militia, and then Mason returned to his suggestion of a select militia, withdrew his already made motion, and moved a power "to make laws for regulating and disciplining the militia, not exceeding one-tenth part in any one year, and reserving the appointment of officers to the States."

Mason's original motion was then renewed by Charles Cotesworth Pinckney, and there was some little discussion of the subject, and very various opinions were expressed. Finally, both motions were referred to the grand committee appointed that day, and on August 21 Livingston reported the following clause upon the militia from that committee:—

"To make laws for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States; reserving to the states, respectively, the appointment of the officers, and the authority of training the militia, according to the discipline prescribed by the United States."

This proposal was taken up by the Convention on August 22 and continued on the 23d, and considerable difference of opinion appeared. Some thought the clause took from the States the control of the militia to too great an extent, and made motions to remedy this, while others wanted still further to limit the control to be exercised by them. Madison, for instance, wanted only to reserve to them the appointment of officers under the rank of general officers. Quite a little temper was displayed, Gerry saying ironically that we had best go on and destroy the States at once and have an executive for life; he wondered at the attempts made that really tended to this result. The amendments were all defeated, and the section as reported agreed to in separate parts, and later referred in the same form to the Committee on Style; they made merely a verbal change, and reported it as follows:—

“To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the [service of the] United States—reserving to the states, respectively, the appointment of the officers, and the authority of training the militia, according to the discipline prescribed by Congress;”

On September 14, during the comparison by the Convention of the report of the Committee on Style with the articles agreed on, Mason moved an amendment to this clause intended to lessen the danger from standing armies in time of peace, which belongs rather in this work to the clause giving the power to raise armies, and is there considered (Article I., Section 8, Clause 12).

## ARTICLE I., SECTION 8, CLAUSE 17.

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings ;

Charles Pinckney's speeches \* show that his draft gave a power to fix the seat of the general government, and in the House revision on July 26, just before the final reference to the Committee of Detail, Mason moved the following resolution :—

*"Resolved*, That it be an instruction to the committee to whom were referred the proceedings of the Convention for the establishment of a national government, to receive a clause or clauses for preventing the seat of the national government being in the same city or town with the seat of the government of any state, longer than until the necessary public buildings can be erected." †

Members did not dislike the idea, but Langdon suggested the case of a state moving its seat of government to the national seat after the erection of public buildings, and Gouverneur Morris feared that such a clause might make enemies of Philadelphia and New York, which had hopes of becoming the seat of the general government. Mason withdrew the motion, apparently for the reason suggested by Morris.

Nothing upon the subject is contained in Randolph's

\* Moore's American Eloquence, i. 369.

† Elliot, i. 220, and v. 374.

committee draft nor in the draft of August 6, but on August 18 Madison introduced a series of powers he proposed to give to Congress, among which were the following :—

“To exercise, exclusively, legislative authority at the seat of the general government, and over a district around the same not exceeding      square miles, the consent of the legislature of the state or states, comprising the same being first obtained.”

“To authorize the executive to procure, and hold, for the use of the United States, landed property, for the erection of forts, magazines, and other necessary buildings.”

On the same day, also, Charles Pinckney introduced the following suggestion of a power to be given to Congress :—

“To fix, and permanently establish, the seat of government of the United States, in which they shall possess the exclusive right of soil and jurisdiction.”

These suggestions of powers were referred to the Committee of Detail, but it did not report upon them, so they went to the Committee on Unfinished Portions. This committee reported on September 5, recommending that the following clause be inserted immediately before the last clause of the first section of the seventh article :—

“To exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may, by cession of particular states and the acceptance of the legislature, become the seat of the government of the United States; and to exercise like authority over all places purchased for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings.”

This proposal was taken up on September 5 and the first part of it at once agreed to *nem. con.*; but Gerry

objected to the part as to exercising authority over forts, etc. He contended that the power might be used to enslave a State by buying up its territory and erecting strongholds. King thought the provision itself needless, as it was necessarily involved; but he moved to insert after the word "purchased" the words "by the consent of the legislature of the State." Gouverneur Morris seconded this, and then the clause was agreed to *nem. con.*

The Committee on Style made some minor changes in the clause, and reported it as follows:—

"To exercise exclusive legislation, in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of government of the United States; and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings."

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#### ARTICLE I., SECTION 8, CLAUSE 18.

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

In Randolph's committee draft Rutledge has interlined, at the very end of the legislative powers, the words "and a right to make all Laws necessary to carry the foregoing Powers into Execution:" and the same idea was enlarged in the draft of August 6 into the following:—

"To make all laws that shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof."

When this clause was reached by the Convention on August 20, Madison and Pinckney moved to insert "and establish all offices" between "laws" and "necessary," for fear that that power might not be included; but several other members thought the amendment could not be necessary, and it was lost; and then the clause as reported was agreed to *nem. con.*

The Committee on Style made a verbal alteration, and then reported the clause as follows:—

"To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof."

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## ARTICLE I., SECTION 9, CLAUSES 1, 4, AND 5.

The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person. . . .

No Capitation, or other direct, tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

No Tax or Duty shall be laid on Articles exported from any State.

These clauses were so bound together in the compromise out of which they grew that they can only be properly considered together. Charles Pinckney's

speeches\* show that he required a two-thirds vote for the passage of laws to regulate trade, and his draft printed in Elliot contains the same provision as a part of Article VI.: but with this very slight exception the clauses all took their origin in the Committee of Detail. Randolph's committee draft, in conferring the legislative power to raise money, made it subject to the exception :—"no taxes on exports," and to the restriction :—"2. no capitation tax which does not apply to all inhabitants under the above limitation :" and the right to regulate commerce was also made subject to the restriction that "1. a navigation act shall not be passed, but with the consent of 2-3rds of the members present of the senate and the like No. of the house of representatives ;" and to the exceptions :—"1. no duty on exports; 2. no prohibition on the importation of such inhabitants or people as the several States think proper to admit; 3. no duties by way of such prohibition." Some parts of the language of these provisions consisted of alterations of Randolph's draft by Rutledge, and it is worthy of note that that one of the clauses which grew later into the prohibition against stopping the importation of slaves was materially changed by Rutledge. Randolph seems to have first written it "no prohibition on importations of inhabitants," but changes were made in this by Rutledge so that it read as above quoted. The Committee of Detail reported as follows :—

"ARTICLE VII., SECTION 4. No tax or duty shall be laid by the legislature on articles exported from any state; nor on the migration or importation of such persons as the several states shall think proper to admit; nor shall such migration or importation be prohibited.

\* Moore's American Eloquence, i. 367.

"SECTION 5. No capitation tax shall be laid, unless in proportion to the census hereinbefore directed to be taken.

"SECTION 6. No navigation act shall be passed without the assent of two-thirds of the members present in each House."

When Section 4 came up in the Convention on August 21 and 22, the first clause was first considered, and was before long agreed to by seven votes to four. Massachusetts, Connecticut, and the Southern States except Delaware were all for it: New Hampshire, New Jersey, Pennsylvania, and Delaware against it. Langdon started the discussion by remarking that the clause (though it prohibited such tax by the general government) left the States at liberty to tax exports, and he suggested a prohibition on the States to tax the produce of other States exported from their harbors, which was inserted later in another part of the Constitution (Article I., Section 10, Clause 2). The discussion went generally to the question of the advisability of the clause reported to prohibit the general government from taxing exports. Gouverneur Morris, Madison (against the general view of the Southern section), Wilson, Dickinson, Fitzsimons, and Clymer were against the provision, while Ellsworth, Williamson, Sherman, Gerry, and Mason were for it. Mason thought the provision so important that he had wanted, at an earlier stage of the proceedings,\* to insert a proviso to the same effect to the power to lay taxes, etc., so as to insure its insertion. He was induced to consent to wait until the present clause should be reached, but he now urged the point strongly. He said that the Southern States have reason for their suspicions,

\* Elliot, v. 432; and see Article I., Section 8, Clause 1.

for the Northern States have a different interest from the Southern ones, and have thirty-six votes against twenty-nine in one branch, and in the proportion of eight to five in the other branch. Motions to amend—*e.g.*, by requiring a two-thirds vote to tax exports—were defeated, and the clause agreed to.

The second part of the same section, to forbid any tax or duty on the importation of such persons as any State might think proper to admit, was also taken up on August 21 and 22. Luther Martin wanted to change the provision so as to allow a tax on the importation of slaves, and he remarked that there would otherwise be in effect a premium on their importation, as they were to count in representation. Rutledge and the two Pinckneys were strenuous against any right to tax the importation of slaves, and said their section would never agree to the Constitution if such a right were given to the general government. Ellsworth and Sherman were for leaving the clause as it was reported. Wilson said that, as the clause stands, all imports are to be taxed except slaves, thus putting a bounty, in effect, on them. Dickinson considered it inadmissible that the importation of slaves should be allowed. Mason was most strong for conferring on the general government the power to prevent the increase of slavery. “The infernal traffic,” he said, “originated in the avarice of British merchants. The British government constantly checked the attempts of Virginia to put a stop to it. . . . They [the slaves] produce the most pernicious effect on manners. Every master of slaves is born a petty tyrant. They bring the judgment of Heaven on a country. . . .” He lamented that “some of our Eastern brethren had,

from a lust of gain, embarked in this nefarious traffic.” Considerable warmth was generated, and several threats made that the plan would certainly fail if the general government were given the power to prohibit.

Williamson, later in the discussion, stated the law of North Carolina upon the subject:—“it did not directly prohibit the importation of slaves. It imposed a duty of £5 on each slave imported from Africa; £10 on each from elsewhere; and £50 on each from a state licensing manumission.” Charles Cotesworth Pinckney then moved to commit the clause, in order that slaves might be made liable to an equal tax with other imports; and Gouverneur Morris wished “the whole subject to be committed, including the clauses relating to taxes on exports and to a navigation act. These things,” he went on, “may form a bargain among the Northern and Southern States.” The portion of Section 4 not yet approved, and the whole of Sections 5 and 6, were then referred to a committee of one from each State, and Langdon, King, Johnson, Livingston, Clymer, Dickinson, Luther Martin, Madison, Williamson, Charles Cotesworth Pinckney, and Baldwin were appointed. They reported on August 24 a recommendation as follows:—

“Strike out so much of the fourth section as was referred to the committee [*i.e.*, that portion relating to the migration or importation of slaves], and insert ‘The migration or importation of such persons as the several states, now existing, shall think proper to admit, shall not be prohibited by the legislature prior to the year 1800; but a tax or duty may be imposed on such migration or importation, at a rate not exceeding the average of the duties laid on imports.’”

“The fifth section to remain as in the report.

“The sixth section to be stricken out.”

When this report was taken up by the Convention on August 25, Charles Cotesworth Pinckney moved to amend so as to make the year when the importation could be prohibited 1808. He was seconded by Gorham, while Madison thought so long a time would be more dishonorable to the American character than to say nothing about it. Gouverneur Morris wanted to amend so as to use the word "slaves," and to name North Carolina, South Carolina, and Georgia as the States into which the slaves might be imported, so as to show that it was done in compliance with the desire of those States; but after some little discussion he withdrew his amendment. Pinckney's amendment was carried.

The clause as to the rate of tax or duty which might be laid on slaves was discussed slightly, and varied opinions on slavery again appeared, but the clause was amended *nem. con.* to read "but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person." The fifth section was then agreed to as reported, in accordance with the recommendation of the committee, and the sixth section was postponed.

The sixth section was taken up again by the Convention on August 29, and Charles Pinckney moved to substitute for it the following provision:—

"That no act of the legislature for the purpose of regulating the commerce of the United States with foreign powers, or among the several states, shall be passed without the assent of two-thirds of the members of each House."

In making his motion, Pinckney detailed five distinct commercial interests in the country, and said that they would be a source of oppressive regulations, if no

check to a bare majority were provided; he thought it would be a pure concession on the part of the Southern States to give the power to regulate commerce. Charles Cotesworth Pinckney thought it was the true interest of the latter to have no regulation of commerce; but, considering the losses to the commerce of the Eastern States by the Revolution, and their liberal conduct towards the views of South Carolina [as to importing slaves, and probably as to surrendering fugitive ones (see Article IV., Section 2, Clause 3)] and the interest the weak Southern States had in being united with the strong Eastern ones, he thought it proper that no fetters should be placed on the power to make commercial regulations. He said he had had prejudices against the Eastern States before he came here, but would acknowledge that he had found them as liberal and candid as any men whatever.

The explanation of these expressions is to be found in Madison's note to the effect that an "understanding" on the two subjects of navigation and slavery had taken place\* between the two sections concerned. Possibly, the younger Pinckney was not aware of this understanding. The subject was discussed for some little time. Sherman thought the diversity detailed by Charles Pinckney was a security in that it would render it difficult to obtain a majority; but Pinckney replied that the two great divisions of northern and southern interests were still left. Butler thought the concession of a power to regulate commerce would be an enormous one for his section to make, and that the interests of the Southern and Eastern States were "as

\* Elliot, v. 489, and see also Luther Martin's letter, Elliot, i. 373.

different as the interests of Russia and Turkey." Mason was of the same opinion, and asked whether it was to be expected that the Southern States would deliver themselves, bound hand and foot, to the Eastern ones, and enable them to exclaim, in the words of Cromwell on a certain occasion,—"the Lord hath delivered them into our hands." Randolph thought there were many odious features in the Constitution already, and doubted whether he could agree to it. Gorham, on the other hand, asked what interest the Eastern States could have to join the government, if it is to be so fettered as to be unable to relieve them. Rutledge, Madison, Spaight, and Gouverneur Morris argued in favor of granting the power to regulate commerce and against Pinckney's motion, and it was then defeated by the votes of seven States against Maryland, Virginia, North Carolina, and Georgia, and the report of the committee for striking out Section 6 requiring two-thirds of each house to pass a navigation act was agreed to *nem. con.*

The clauses in question were therefore referred to the Committee on Style in the following form:—

"No tax or duty shall be laid by the legislature on articles exported from any state.

"The migration or importation of such persons as the several states now existing shall think proper to admit shall not be prohibited by the legislature prior to the year 1808, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

"No capitation tax shall be laid, unless in proportion to the census hereinbefore directed to be taken."

The committee made very little change in the language of these provisions, but did alter the succession

materially and reported the matter as the fifth, first, and fourth clauses respectively of Section 9, Article I., as follows:—

“The migration or importation of such persons as the several states, now existing, shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight; but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

\* \* \* \* \*

“No capitation tax shall be laid, unless in proportion to the census herein before directed to be taken.

“No tax or duty shall be laid on articles exported from any state.”

But the members were not yet satisfied upon the subject of navigation acts, and on September 15, during the comparison by the Convention of the report of the Committee on Style with the articles agreed on, Mason expressed his dissatisfaction with the Constitution upon this subject. He did this during the discussion of the fifth article relating to amendments, and seems to have made his motion as an additional proviso to that clause, though it was certainly entirely out of place there. After expressing his discontent at the power given to Congress by a bare majority to pass navigation acts, and thereby not only enhance the freight but enable a few rich merchants in Philadelphia, New York, and Boston to monopolize the staples of the Southern States and reduce their value maybe fifty per cent., he moved a further proviso in the following language:—

“That no law in the nature of a navigation act be passed before the year 1808, without the consent of two-thirds of each branch of the legislature.”

The motion was lost by three ayes to seven noes.

On September 13 the clause in regard to importing slaves was amended \* by striking out the word "several" and inserting "any of" between "as" and "the" in the first clause, and on September 14, Read moved to amend the clause in regard to capitation taxes by inserting the words "or other direct tax" after the word "capitation;" he feared that some liberty might otherwise be taken to saddle the States with a readjustment, by this rule, of past requisitions of Congress: his amendment, by giving another cast to the meaning, would take away that pretext. Williamson seconded the motion, and it was agreed to. The same clause was also amended by adding, on the motion of Mason, the words "or enumeration" after "census" as explanatory thereof.

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#### ARTICLE I., SECTION 9, CLAUSE 2.

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

Charles Pinckney's speeches† show that his draft contained some provision for the writ of habeas corpus, and on August 20 he introduced into the Convention and had referred to the Committee of Detail a series of resolutions, one of which was in the following words:—

"The privileges and benefit of the writ of *habeas corpus* shall be enjoyed in this government in the most expeditious and ample

\* Elliot, i. 311.

† Moore's American Eloquence, i. 369.

manner, and shall not be suspended by the legislature, except upon the most urgent and pressing occasions, and for a limited time, not exceeding        months."

And before any report had been made upon this resolution, the same member on August 28 again urged the propriety of securing the *habeas corpus* in the most ample manner, and moved that it should not be suspended but on the most urgent occasions, and then only for a limited time not exceeding twelve months. This was immediately after a vote upon the clause (Article III., Section 2, Clause 3) providing that criminal trials should be by jury, and should be held in the State where the crime was committed. Rutledge was in favor of declaring the *habeas corpus* inviolable, and did not conceive that a suspension could ever be necessary at the same time through all the States. Wilson doubted whether in any case a suspension could be necessary, as the discretion now exists with judges in most important cases to keep in gaol or admit to bail. Gouverneur Morris moved the following provision upon the subject:—"the privilege of the writ of *habeas corpus* shall not be suspended, unless where, in cases of rebellion or invasion, the public safety may require it;" the first portion, containing an absolute prohibition, was at once agreed to *nem. con.*, and then the portion beginning with "unless" was agreed to by seven States to three. The Committee on Style made merely a verbal change, and then reported as follows:—

"The privilege of the writ of *habeas corpus* shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it."

## ARTICLE I., SECTION 9, CLAUSE 3.

No Bill of Attainder or *ex post facto* Law shall be passed.

This clause did not originate until quite a late period in the Convention. On August 22 Gerry and McHenry moved to insert after the second section of the seventh article the words, "The legislature shall pass no bill of attainder, nor any *ex post facto* law." The Convention had already approved, in Article VII., Section 4 (see Article III., Section 3, Clauses 1 and 2), of a provision that attainters of treason should not work corruption of blood except for the life of the person attainted, and this was the only provision touching attainters of treason in the draft of the Constitution reported by the Committee of Detail. The first part of this motion of Gerry and McHenry was evidently aimed to prevent entirely legislative attaints.

It seems pretty clear that the language of the second portion as to *ex post facto* laws was intended by Gerry and McHenry and understood by a good many members to prohibit not only what we understand by such laws to-day, but also to prohibit laws violating contractual rights. The words *ex post facto* were not then so clearly understood to be confined to criminal cases; and, during the debate upon this very subject, members used expressions showing clearly that they thought the provision included civil cases and violations of contracts. During the discussions of the similar limitation on the States, moreover (Article I., Section 10, Clause 1), the like language had been used with an evident intent that it should apply to civil cases; and as late as August 29 Dickinson remarked

that he had found, on examining Blackstone's Commentaries, that the term *ex post facto* was confined to criminal cases, that it would not, therefore, restrain the States from retrospective laws in civil cases, and that some further provision would be requisite. This seems to have been finally accepted by the Convention as the true meaning of the words.

If it was the intention of some members by the use of the term *ex post facto* in the clause now under consideration to extend the prohibition to civil cases, it is another illustration how strongly they were impressed with the desire to prevent those violations of contractual rights which they had so often seen; and some of the ideas thrown out on August 18 by Charles Pinckney, and Gerry, and Rutledge, and detailed more at length in another place (Article I., Section 10, Clause 1), have also to do with the origin of the present clause.

When the motion of Gerry and McHenry was considered in the Convention on August 22, the portion as to bills of attainder was agreed to *nem. con.*; but Ellsworth said "there was no lawyer, no civilian, who would not say that *ex post facto* laws were void of themselves," and Wilson evidently agreed with him, and objected that such a clause would bring reflections on the Constitution "and proclaim that we are ignorant of the first principles of legislation." To these arguments it was answered that experience overruled all other calculations, and that such laws had been passed by State legislatures and enforced. The portion as to *ex post facto* laws was agreed to by seven votes to three.

The Convention having thus approved of the suggestion of Gerry and McHenry that "the legislature

shall pass no bill of attainder, nor any *ex post facto*" law, the Committee on Style made some changes of form, and reported the clause as follows:—

"No bill of attainder shall be passed, or any *ex post facto* law."

On September 14, during the comparison by the Convention of the report of the Committee on Style with the articles agreed on, Mason moved to strike out the words "or any *ex post facto* law:" he did not think it sufficiently clear that the prohibition meant by this phrase was limited to cases of a criminal nature, and no legislature can avoid them in civil cases. Gerry, on the other hand, wanted to go farther, and extend the prohibition to civil cases, but all the States voted no. On the same day the clause was changed\* to read:—"no bill of attainder or *ex post facto* law shall be passed."

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#### ARTICLE I., SECTION 9, CLAUSE 4.

No Capitation, or other direct, tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

This clause has already been treated of under Article I., Section 9, Clauses 1, 4, and 5.

\* Elliot, i. 311.

### ARTICLE I., SECTION 9, CLAUSE 5.

No Tax or Duty shall be laid on Articles exported from any State.

This clause has already been considered under Article I., Section 9, Clauses 1, 4, and 5.

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### ARTICLE I., SECTION 9, CLAUSE 6.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

This clause had its origin in two proposals made in the Convention as late as August 25. On that day Carroll and Luther Martin expressed their apprehensions that under the power to regulate trade the general legislature might make requirements favoring particular ports, and moved a resolution upon the subject, which was referred *nem. con.* to a committee of one from each State, and Langdon, Gorham, Sherman, Dayton, Fitzsimons, Read, Carroll, Mason, Williamson, Butler, and Few were appointed. The resolution in question was as follows:—

“The legislature of the United States shall not oblige vessels belonging to citizens thereof, or to foreigners, to enter or pay duties or imposts in any other state than in that to which they may be bound, or to clear out in any other than the state in which their cargoes may be laden on board; nor shall any privilege or immunity be granted to any vessel on entering or clearing out, or paying duties or imposts in one state in preference to another.”

On the same day McHenry and Charles Cotesworth Pinckney moved the following resolution, which was at once referred to the same committee:—

“Should it be judged expedient by the legislature of the United States, that one or more ports for collecting duties or imposts, other than those ports of entrance and clearance already established by the respective states, should be established, the legislature of the United States shall signify the same to the executives of the respective states, ascertaining the number of such ports judged necessary, to be laid by the said executives before the legislatures of the states at their next session; and the legislature of the United States shall not have the power of fixing or establishing the particular ports for collecting duties or imposts in any state, except the legislature of such state shall neglect to fix and establish the same during their first session to be held after such notification by the legislature of the United States to the executive of such state.

“All duties, imposts, and excises, prohibitions or restraints, laid or made by the legislature of the United States, shall be uniform and equal throughout the United States.”

On August 28 Sherman reported from the committee to which these resolutions had been referred, that there be inserted after the fourth clause of the seventh article \*:—

“Nor shall any regulation of commerce or revenue give preference to the ports of one State over those of another, or oblige vessels bound to or from any State to enter, clear, or pay duties, in another; and all tonnage, duties, imposts, and excises, laid by the legislature, shall be uniform throughout the United States.”

The report was not taken up by the Convention until August 31, when it was agreed *nem. con.* to insert the clause prohibiting preferences after Article VII.,

\* The texts of Elliot (i. 270; v. 483) read *section*; but there can be no doubt that this is an error for *article*; see v. 502.

Section 4. On the clause to prevent the requiring of vessels bound to or from one State to enter or clear in another, Madison thought it would be inconvenient not to be able, *e.g.*, to require a vessel to make entry in the Delaware River below Pennsylvania; but Fitzsimons thought that allowing such a requirement would result in still greater inconvenience. Gorham and Langdon agreed with Madison, and spoke of the situation of the trade of Massachusetts and of the case of Sandy Hook. McHenry said that the clause would not prevent the placing of an officer on board as a security for due entry, etc. Carroll and Jenifer urged the clause as one which was a very tender point in Maryland. It was agreed to by eight States to two, and the last clause as to uniformity was then agreed to *nem. con.*, after the word tonnage was struck out as being comprehended in "duties."

The Committee on Style does not seem to have reported this clause at all, but on September 14, during the comparison by the Convention of the report of the Committee on Style with the articles agreed on, the part of it having relation to the subject under consideration here was on motion inserted in this portion of the Constitution as an amendment in the following form :—

"No preference shall be given, by any regulation of commerce or revenue, to the ports of one state over those of another; nor shall vessels bound to or from one state be obliged to enter, clear, or pay duties in another."

## ARTICLE I., SECTION 9, CLAUSE 7.

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

The first portion of this clause was transferred to this part of the Constitution by the Committee on Style from another clause. It had a long and varied history in the body, and originated during the struggle over the subject of representation. On July 2, after the defeat of the motion that each State should have an equal vote in the Senate, and when the Convention was consequently nearly ready to break up, it was moved by Charles Cotesworth Pinckney that a committee be appointed to devise some compromise. Gerry, Ellsworth, Yates, Paterson, Franklin, Bedford, Mason, Davy, Rutledge, and Baldwin were appointed; and they recommended the provisions which have already been considered (Article I., Section 2, Clause 3). These established equal representation in the Senate, and proportional representation in the House, and contained the provision that money-bills should originate in the House and not be amended in the Senate; and they also contained the words, "and that no money shall be drawn from the public treasury, but in pursuance of appropriations to be originated by the first branch." The provision as to money-bills was thought of the utmost importance by Mason and Gerry and some other members; and it is likely that the clause as to drawing money from the treasury was a portion of this same contention of theirs. The whole clause was approved by the Convention, and was referred to the

Committee of Detail, who reported a section (Section 5 of Article IV. of the draft of August 6) containing the provision as to the origin of money-bills, and also the words, "no money shall be drawn from the public treasury but in pursuance of appropriations that shall originate in the House of Representatives." When the Convention came, however, to consider this section, the whole of it was struck out after a short discussion,\* despite the objection of some members, who argued that it formed a part of the compromise upon the subject of representation, and ought not to be disturbed. A reconsideration was moved, but the Convention adhered to its former decision after quite a long discussion.†

But the subject was renewed at a later stage and in another part of the Constitution (Article I., Section 7, Clause 1). The twelfth section of Article VI. of the draft of August 6 provided that "each House shall possess the right of originating bills, except in the cases before mentioned," the exception having reference to the special provision as to money-bills; and, when this clause came up in the Convention on August 15, the advocates of the House's privileges as to money-bills urged the point again, but the Convention postponed it both then and on August 21, and therefore the clause as to each House having the right to originate bills went to the Committee on Unfinished Portions. Doubtless, the members who favored the provision as to money-bills once more renewed their contention in this committee, and it reported on September 5, recommending a very material change in the purpose of the section, and proposing a clause which contained the language as to money-bills in a modified

\* Elliot, v. 394-95.

† Ibid., v. 414-20.

form, and also contained the words, "no money shall be drawn from the treasury, but in consequence of appropriations made by law." This was postponed on September 5, and on the 8th an alteration was made as to money-bills, and then the whole clause was approved by nine States to two. The Committee on Style, to which the subject then went, separated that portion of the clause we are here concerned with from the rest, and reported it as the clause and article now under consideration in the following words:—

"No money shall be drawn from the treasury, but in consequence of appropriations made by law."

On September 14, during the comparison by the Convention of the report of the Committee on Style with the articles agreed upon, Mason moved a clause requiring "that an account of the public expenditures should be annually published." Gouverneur Morris, King, and Fitzsimons opposed it as impossible, while Madison suggested to make it read "from time to time" instead of "annually," so as to require frequent publication, but leave some discretion. The Articles of Confederation, he said, in calling for half-yearly publications, required too much, and the consequence was that the practice had ceased altogether. Wilson and Sherman approved the clause as amended, and it was then added, *nem. con.*, to the clause now under discussion in the following form:—

"And a regular statement and account of the receipts and expenditures of all public money shall be published from time to time."

**ARTICLE I., SECTION 9, CLAUSE 8.**

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

The first portion of this clause seems to have originated entirely in the Committee of Detail. There is nothing in regard to it in Randolph's draft, but the committee reported the following :—

“ARTICLE VII., SECTION 7. The United States shall not grant any title of nobility.”

And in this form it was agreed to by the Convention *nem. con.* as soon as it came up on August 23.

On the same day Charles Pinckney moved to add a new clause after the preceding, as follows, and this was agreed to at once *nem. con.* :—

“No person holding any office of trust or profit under the United States shall, without the consent of the legislature, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.”

The Committee on Style made some minor changes in these provisions, and reported them as follows :—

“No title of nobility shall be granted by the United States.

“And no person holding any office of profit or trust under them, shall, without the consent of Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.”

## ARTICLE I., SECTION 10, CLAUSE 1.

No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; . . . or grant any Title of Nobility.

These provisions had their origin mainly in the Committee of Detail, though Charles Pinckney's speeches\* seem to show that his draft prohibited the States from emitting bills of credit. Randolph's draft conferred on the general government "the exclusive right of coining money," and Rutledge has interlined, "no State to be permitted to emit in future paper bills of credit without the approval of the National Legislature nor to make anything but specie a tender in payment of debts." The committee reported this prohibition of Rutledge as a part of the thirteenth article:—"No State, without the consent of the legislature of the United States, shall emit bills of credit, or make anything but specie a tender in payment of debts;" and they also reported certain absolute prohibitions on the States in the twelfth article, as follows:—

"No state shall coin money; nor grant letters of marque and reprisal; nor enter into any treaty, alliance, or confederation; nor grant any title of nobility."

When this twelfth article came up before the Convention on August 28, Wilson and Sherman moved to insert after the words "coin money" the words "nor emit bills of credit, nor make any thing but gold and

\* Moore's American Eloquence, i. 367.

silver coin a tender in payment of debts.” Their plan was to transfer these words from Article XIII. of the draft of August 6, where the acts in question were permissive with the consent of the legislature of the United States (see Article I., Section 10, Clauses 2 and 3), to this article, which contained absolute prohibitions, and Sherman said he thought this a favorable moment for crushing paper money. The portion of the motion intended to prohibit absolutely the emitting of bills of credit by the States was agreed to by eight votes to one (Virginia), and the balance of the motion in regard to tender was agreed to *nem. con.*

This decision of the Convention was doubtless intended as an extension of the determination (see “Defeated Proposals: Bills of Credit”) to prevent the evils of paper money, already manifested by striking out from the powers of Congress the power to “emit bills on the credit of the United States.” The whole section was approved as follows:—

“No state shall coin money, nor emit bills of credit, nor make anything but gold and silver coin a tender in payment of debts; nor grant letters of marque and reprisal; nor enter into any treaty, alliance, or confederation; nor grant any title of nobility.”

The Committee on Style reported the clause as follows:—

“SECTION 10. No state shall coin money, nor emit bills of credit, nor make any thing but gold and silver coin a tender in payment of debts, . . . nor grant letters of marque and reprisal; nor enter into any treaty, alliance, or confederation; nor grant any title of nobility.”

On September 14, during the comparison by the Convention of the report of the Committee on Style

with the articles agreed on, the clause as reported by the Committee on Style was altered to read as follows:—

“No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; . . . or grant any title of nobility.”

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#### ARTICLE I., SECTION 10, CLAUSE 1.

[No State shall] . . . pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts. . . .

The provisions here concerned arose at a very late date in the Convention. On August 28, immediately after they had agreed to an absolute prohibition on the States to emit bills of credit or make anything but gold and silver coin a tender in payment of debts (Article I., Section 10, Clause 1, *ante*), King moved to add “in the words used in the ordinance of Congress establishing new States, a prohibition on the States to interfere in private contracts.” He referred, of course, to a provision contained in the well-known Ordinance of 1787 in regard to the Northwestern Territory, which provided for the eventual creation out of that territory of five States, and contained the following provision:—

“And in the just preservation of rights and property, it is understood and declared that no law ought ever to be made or have force in that territory that shall in any manner interfere with or affect private contracts or engagements, *bona fide* and without fraud previously formed.”

This ordinance had passed Congress on July 13, and was printed \* in a Philadelphia newspaper of July 25. King appears to have taken an interest in the enactment of the ordinance, and wrote \* Gerry, "When I tell you the history of this ordinance, you shall acknowledge that I have some merit in the business;" but he was not the author of the special provision in question. Richard Henry Lee and Nathan Dane both claimed to have originated it, but Bancroft † seems rather to award the credit to Lee.

The motion of King, as well as the provision in the Ordinance of 1787, was undoubtedly inspired by the same idea which was so deeply rooted in the minds of all our leading public men of the day as to the absolute necessity of guarding against violations of the private contractual rights of individuals, as well as of the public faith and of treaties. Repeatedly, they had known the States to pass stay-laws, to claim freedom from the ante-Revolution British debts, to pass paper tender laws, etc.; and these laws had often made trouble in other countries, so that Madison said ‡ in the Convention that "the files of Congress contain complaints already from almost every nation with which treaties have been formed." The treaty of peace with Great Britain was still alleged by the British creditors not to have been carried out on our side, and the British still held on to some of our posts. I think this same idea had had an influence on the Convention in its earlier treatment of the provision to prohibit Congress from passing *ex post facto* laws, as has been con-

\* Justin Winsor, *The Westward Movement*, p. 284.

† *History of the Constitution*, ii. 113.

‡ Elliot, v. 207.

sidered under Article I., Section 9, Clause 3, and numerous references\* were made in the proceedings to the difficulties experienced from the violations of treaties by the States; other proposals in the same general direction had, moreover, been made in the Convention earlier.

Thus, on August 18 Charles Pinckney moved the following ideas as to provisions to be put in the Constitution, and had them referred to the Committee of Detail:—"to secure the payment of the public debt;" "that funds which shall be appropriated for the payment of public creditors shall not, during the time of such appropriation, be diverted or applied to any other purpose;" and again, "to secure all creditors, under the new Constitution, from a violation of the public faith, when pledged by the authority of the legislature." Still other ideas in the same direction are to be found in the suggestions made the same day by Gerry for a provision in favor of public securities, and by Rutledge, "that funds appropriated to public creditors should not be diverted to other purposes," both of which were referred at the same time with Pinckney's to the Committee of Detail. That committee did not make any report upon the subject; but these ideas may well have been concerned in leading up to King's motion, though the latter went undoubtedly much farther, for it extended to all cases of contracts between parties, and was not confined to cases of debts or obligations of the States.

The proposal of King was considered by the Convention on August 28, immediately after it was offered,

\* Elliot, v. 127, 171, 207, 546; and see Randolph's sixth resolution, v. 127, and Paterson's fifth resolution, v. 192.

but there was not any extended debate. Gouverneur Morris thought it would be going too far, and that there were a thousand laws relating to the bringing of actions, limitations of actions, etc., which affect contracts. "The judicial power of the United States," he said, "will be a protection in cases within their jurisdiction; and within the state itself a majority must rule, whatever may be the mischief done among themselves." To this Sherman replied by asking "Why, then, prohibit bills of credit?" Wilson and Rutledge favored the idea of King, and Madison did so, too, but thought that a negative on State laws alone could secure the result intended. Mason stated his general concurrence with the views expressed by Gouverneur Morris, and asked whether it could be proper to tie the hands of the States from making provisions in such cases as the limitations of actions. Wilson thought the answer to these objections was that only retrospective *interferences* were to be prohibited. Madison thought this had already been done by the prohibition of *ex post facto* laws, which would oblige the judges to declare such interferences null and void. Neither he nor any other member seems to have observed that the prohibition of *ex post facto* laws thus far placed in the Constitution was applicable only to the powers of Congress, and did not extend to the States. On motion of Rutledge, the motion of King was varied to read apparently as follows, and was then agreed to by seven States to three, the language being evidently taken from the clause already agreed to prohibiting Congress from the like acts:—"nor pass bills of attainder, nor *ex post facto* laws."\*

\* Elliot, i. 271; v. 485.

This is the language reported in the Journal of the Convention, and the evidence is that it was the actual form, for on August 29 Dickinson mentioned to the House that, on examining Blackstone's Commentaries, he found that the term *ex post facto* related to criminal cases only, and that some further provision would therefore be necessary in order "to restrain the States from retrospective laws in civil cases." The Debates as reported by Madison, however, give the word "retrospective" in lieu of *ex post facto*, so that it is not entirely clear which expression was contained in the clause when it was referred to the Committee on Style. The evidence undoubtedly favors *ex post facto*, in which case it would seem likely that "retrospective" was inserted by Madison in the Debates after Dickinson had used the word in his remark about Blackstone. The Committee on Style reported the clause as follows, having inserted a new phrase doubtless to meet the difficulty suggested by Dickinson :—

"[No state shall coin money] . . . nor pass any bill of attainder, nor *ex post facto* laws, nor laws altering or impairing the obligation of contracts."

On September 14, during the comparison by the Convention of the report of the Committee on Style with the articles agreed on, the language was changed to the form it now has by dropping out the words "altering or." Gerry then made some observations as to the importance of the public faith and the propriety of the restraint put upon the States from impairing the obligation of contracts, and urged that Congress ought to be put under like prohibitions. He made a motion to that effect, but was not seconded.

**ARTICLE I., SECTION 10, CLAUSE 2.**

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

The thirteenth article of the draft of August 6 as reported by the Committee of Detail specified certain things which should not be done by the States without the consent of Congress, and the provisions it contained were evidently the device of the committee to carry out the general spirit of the resolutions referred to them. These provisions grew into two separate sections in the final Constitution, the first of which is alone under consideration here. Its germ is to be found in Randolph's committee draft, where Rutledge interlined the words "No State to lay a duty on imports" under the legislative power of regulating commerce; and it is contained in the report of the thirteenth article by the committee in the words, "No State, without the consent of the legislature of the United States, shall . . . lay imposts or duties on imports."

The article in question came up for consideration in the Convention on August 28, and this provision, as well as most of the article, was soon agreed to. Madison moved to transfer it to the clause (see Article I., Section 10, Clause 1) where absolute prohibitions on the States are inserted, but his motion was lost. During the discussions of the prohibition against the taxation of exports by the federal government (Article I., Sec-

tion 9, Clauses 1, 4, and 5), Langdon had remarked, on August 21, upon the fact that there was nothing in the Constitution to prevent the States from taxing exports; and now, on motion of King, the prohibition in the present clause against the States laying duties on imports was extended to include exports also, and then, on motion of Sherman, there were added after the word "exports" the words "nor with such consent, but for the use of the United States." In the short discussion of this amendment Gouverneur Morris urged the necessity of it so as to prevent the Atlantic States from endeavoring to tax the Western States and promote their own interest by opposing the navigation of the Mississippi,—a course which, he said, would drive the Western people into the arms of Great Britain. Clymer thought the encouragement of the Western States suicidal on the part of the old ones.

The Committee on Style reported this provision as follows:—

"No state shall, without the consent of Congress, lay imposts or duties on imports or exports, nor with such consent, but to the use of the treasury of the United States."

In the Convention, on September 12, after the Committee on Style had made its report, but in the shape of an amendment to the old thirteenth article of the draft of August 6, on which it was based, Mason moved to reconsider in order to add the following clause:—

"provided, nothing herein contained shall be construed to restrain any state from laying duties upon exports for the sole purpose of defraying the charges of inspecting, packing, storing, and indemnifying the losses in keeping the commodities in the care of public officers, before exportation."

Mason's fear was that, without some such amendment, the restrictions on the States would prevent the incidental duties necessary for the inspection and safe keeping of the produce of the staple States and be ruinous to them. Madison seconded the motion, and Gouverneur Morris saw no objection to it. Dayton thought the proviso would enable Pennsylvania to tax New Jersey under the idea of inspection duties, and Gorham and Langdon said there would then be no security for the States exporting through other States. Dickinson suggested that this difficulty could only be met by requiring the assent of Congress to inspection duties, and made a motion to this effect. The next day (September 13) Mason renewed his proposition in the following form, and it was carried by seven to three :—

“ Provided, that no state shall be restrained from imposing the usual duties on produce exported from such state, for the sole purpose of defraying the charges of inspecting, packing, storing, and indemnifying the losses on such produce while in the custody of public officers ; but all such regulations shall, in case of abuse, be subject to the revision and control of Congress.”

On September 15, during the comparison by the Convention of the report of the Committee on Style with the articles agreed on, the clause reported by that committee and the proviso of Mason were laid aside in favor of the following substitute :—

“ No state shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws ; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States ; and all such laws shall be subject to the revision and control of the Congress.”

A motion being made to strike out the last part as to the control of Congress, it was lost, and the substitute was then agreed to, with Virginia only in the negative.

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### ARTICLE I., SECTION 10, CLAUSE 3.

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

These provisions, like the preceding ones, originated in the Committee of Detail, and are to be found in the main in the thirteenth article of the draft of August 6. Randolph inserted in his draft a legislative power "to regulate the force permitted to be kept in each State;" and the Committee of Detail reported the whole article as follows, some portions of it having reference to other parts of the Constitution than that with which we are here concerned:—

"ARTICLE XIII. No state, without the consent of the legislature of the United States, shall emit bills of credit, or make any thing but specie a tender in payment of debts; nor lay imposts or duties on imports; nor keep troops or ships of war in time of peace; nor enter into any agreement or compact with another state, or with any foreign power; nor engage in any war, unless it shall be actually invaded by enemies, or the danger of invasion be so imminent as not to admit of a delay until the legislature of the United States can be consulted."

When this article came up in the Convention on August 28, it was soon agreed to with but few amendments; evidently the clause as to bills of credit and

tender was considered as removed already to the clause (Article I., Section 10, Clause 1) containing absolute prohibitions. The portions of the clause with which we are here concerned were therefore referred to the Committee on Style in the same form in which they had been reported by the Committee of Detail, and they reported them back as follows:—

“No state shall, without the consent of Congress, . . . nor keep troops or ships of war in time of peace; nor enter into any agreement or compact with another state, nor with any foreign power; nor engage in any war, unless it shall be actually invaded by enemies, or the danger of invasion be so imminent as not to admit of delay until the Congress can be consulted.”

When this came up for final consideration by the Convention on September 15, McHenry and Carroll moved that “no State shall be restrained from laying duties of tonnage for the purpose of clearing harbors and erecting light-houses;” and Mason urged the situation of the Chesapeake, which particularly required expenses of this sort. Gouverneur Morris answered that the States are not restrained from laying tonnage, as the Constitution then stood. Madison thought that depended upon the extent of the power “to regulate commerce,” which is a vague term, but seems to exclude this power of the States. The States could at least certainly be restrained by treaty. He was more and more convinced that the regulation of commerce was indivisible, and ought to be under one authority. Sherman did not fear a concurrent authority upon the subject, as that of the United States was to control in case of interfering regulations. Langdon insisted that the States ought to have nothing to do with the matter. The motion of McHenry and Carroll was then

modified to read that “no State shall lay any duty on tonnage without the consent of Congress,” and was carried by six votes to four, and the paragraph was then remoulded and passed as follows :—

“No state shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.”

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## ARTICLE II., GENERALLY.

Charles Pinckney’s speeches\* show that his plan proposed an executive to hold office for seven years and to be re-eligible, but it does not appear how he was to be chosen. The seventh resolution of the Virginia plan was as follows :—

“Resolved, that a national executive be instituted; to be chosen by the national legislature for the term of ; to receive punctually, at stated times, a fixed compensation for the services rendered, in which no increase or diminution shall be made so as to affect the magistracy existing at the time of increase or diminution; and to be ineligible a second time; and that, besides a general authority to execute the national laws, it ought to enjoy the executive rights vested in Congress by the Confederation.”

When this subject was taken up on June 1, Wilson moved to amend the first clause so as to read “that a national executive, to consist of a single person, be instituted,” but Randolph strenuously opposed an

\* Moore’s American Eloquence, i. 364.

unity of the executive, which he considered the foetus of monarchy, and the next day he explained that he was in favor of three members of the executive, to be drawn from different portions of the country. As members seemed unprepared for the general question, Wilson's amendment was postponed by common consent. The clause "that a national executive be instituted" was agreed to. On the same day Madison moved to strike out so much of the clause as related to the powers of the executive, and to add after the word "instituted" the words "with power to carry into execution the national laws; to appoint to offices in cases not otherwise provided for; and to execute such other powers, not legislative or judiciary in their nature, as may from time to time be delegated by the national legislature." On motion the clauses "with power to carry into execution the national laws; to appoint to offices in cases not otherwise provided for" were agreed to, but the balance of the amendment was defeated.

On the same day the blank for the President's term of office was filled up with seven years, some members having favored that period and some three years with an ineligibility after some terms.

Upon the method of appointment of the President, Wilson said that he was almost unwilling to declare his preference, fearing that it might appear chimerical; but in theory, at least, he was for an election by the people, and he wished to derive both the executive and the legislature without the intervention of the State legislatures. Mason favored this idea, but doubted its practicability: he hoped Wilson might have time to digest his plan. Rutledge favored a choice by the second branch of the national legislature. The next

day (June 2) Wilson offered the following substitute for the mode proposed in the Virginia resolutions:—

“That the states be divided into      districts, and that the persons qualified to vote in each district for members of the first branch of the national legislature elect      members for their respective districts to be electors of the executive magistracy; that the said electors of the executive magistracy meet at      , and they or any      of them so met, shall proceed to elect by ballot, but not out of their own body,      person      in whom the executive authority of the national government shall be vested.”

Wilson’s amendment was defeated, and the words of Randolph’s original resolution—“to be chosen by the national legislature for the term of seven years,” and “to be ineligible a second time”—were then approved. It is worthy of note that the plan of electing officers by a system of intermediate electors to be chosen by the people, which Wilson had thus proposed and which was finally adopted for the Executive, was also proposed by Gerry on June 6 as a method of choosing members of the House of Representatives.

Dickinson moved to make the executive removable by the national legislature, on the request of a majority of the legislatures of the States, but the motion was supported only by Delaware, and on motion of Williamson and Davie the words “and to be removable on impeachment and conviction of malpractice or neglect of duty” were added. On June 2 the committee took up again the question whether the executive should consist of a single person or not. Randolph strenuously opposed a single executive, while Rutledge, Charles Pinckney, Butler, Wilson, and Gerry supported it, and it was carried on June 4.

On June 9 Gerry moved that the national executive, instead of being chosen by the national legislature, "should be elected by the executives of the States, whose proportion of votes should be the same with that allowed to the States in the election of the Senate." He thought the executives would choose the fittest men, and argued that, as the first branch of the legislature was to be chosen by the *people* of the States, and the second by the *legislatures*, the analogy would be preserved by letting the executive be chosen by the *executives* of the States. Randolph urged the inexpediency of the proposal, and it was at once defeated by nine noes, Delaware divided. The whole clause stood at this time as follows, the last clause as to salary having been apparently inserted *sub silentio* without a vote, so as to avoid opposing Franklin, who was against any salary :—\*

"Resolved, That a national executive be instituted, to consist of a single person; to be chosen by the national legislature, for the term of seven years: with power to carry into execution the national laws; to appoint to offices in cases not otherwise provided for; to be ineligible a second time, and to be removable on impeachment and conviction of malpractice or neglect of duty; to receive a fixed compensation for the devotion of his time to the public service, to be paid out of the public treasury."

The executive came up on July 17 before the House itself, and was the occasion of great differences of opinion and of very varying decisions. The resolution, as quoted above, was at first approved by the Convention on that day, with the exception of the clauses as to the length of the term and as to the ineligibility for a second term; the ineligibility was on that day struck

\* Elliot, v. 144-47.

out, and then some members urged a longer term, and a motion was made for a tenure during good behavior. On the 19th they voted for a six-year term, and this question, as well as the ineligibility, was discussed for several days.

The appointment by the legislature also met with considerable opposition, and was at one time defeated. On July 17 a motion to refer the election "to the citizens of the United States" was lost,\* as was also the suggestion † of Luther Martin that the executive "be chosen by electors to be appointed by the several legislatures of the individual States." But on the 19th, when the subject of the executive was taken up again after a postponement, it was evident that the plan of electors had found some favor; King, Madison, Paterson, Gerry, and Ellsworth, all expressed their approval of it, some thinking they should be appointed by the people and some by the State executives or legislatures. In pursuance of the idea, Ellsworth moved that such electors should be appointed by the State legislatures in the ratio of one for every State not containing over two hundred thousand inhabitants, two for each State between that and three hundred thousand, and three for each State over three hundred thousand. The next day (July 20) Gerry moved that in the first instance twenty-five electors should be allotted to the States in proportions which he specified, and his motion passed. They then passed a resolution that the electors should not be "members of the national legislature, or officers of the Union, or eligible to the office of supreme magistrate." Williamson moved that in future elections

\* Elliot, v. 322-24.

† Ibid., v. 324.

"the number of electors to be appointed by the several States shall be regulated by their respective numbers of representatives in the first branch," but the motion was lost. Finally, in perfecting the system of electors, it was resolved that they should be paid out of the national treasury.

They had thus decided on a pretty complete system for the election of an executive by electors to be appointed by the legislatures of the States, but several days later, when they were nearly ready to refer all their resolutions to the Committee of Detail, it was moved\* to reconsider the subject, and the whole method of selecting the executive was altered, and after a debate of three days (July 24 to July 26) that reported by the committee of the whole was readopted. Houston was the mover of this reconsideration, and urged the inconvenience and expense of drawing together electors for the single purpose of choosing the chief magistrate. On this question members were still very much at sea, and groped around for some satisfactory method of selection. The difficulties of every mode proposed were admitted, and the chief difference was as to which was the least bad. Wilson, who was most strongly against the election by the legislature, moved† at one time that a small number of the legislature should be drawn by lot and should then make the election, and other proposals were made but were rejected. Finally, the clause was passed‡ in this shape by six to three:—

"That a national executive be instituted, to consist of a single person, to be chosen by the national legislature for the term of seven years, to be ineligible a second time, with power to carry

\* Elliot, v. 357.

† Ibid., v. 362.

‡ Ibid., v. 369-70.

into execution the national laws, to appoint to offices in cases not otherwise provided for, to be removable on impeachment and conviction of malpractice or neglect of duty, to receive a fixed compensation for the devotion of his time to the public service, to be paid out of the national treasury."

With this were also referred to the Committee of Detail, though without any approval by the Convention, the resolutions introduced by Paterson, the fourth of which provided as follows on the subject of the executive:—

"Resolved, That the United States in Congress be authorized to elect a federal executive, to consist of        persons; to continue in office for the term of        years; to receive punctually, at stated times, a fixed compensation for their services, in which no increase nor diminution shall be made so as to affect the persons composing the executive at the time of such increase or diminution; to be paid out of the federal treasury; to be incapable of holding any other office or appointment during their time of service, and for        years thereafter; to be ineligible a second time, and removable by Congress, on application by a majority of the executives of the several states: that the executive, besides their general authority to execute the federal acts, ought to appoint all federal officers not otherwise provided for, and to direct all military operations;—provided, that none of the persons composing the federal executive shall, on any occasion, take command of any troops, so as personally to conduct any military enterprise, as general, or in any other capacity."

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## ARTICLE II., SECTION 1, CLAUSES 1-4.

The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows

Each State shall appoint, in such Manner as the Legislature

thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

The electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately chuse by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said House shall in like manner chuse the President. But in chusing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice President. But if there should remain two or more who have equal votes, the Senate shall chuse from them by ballot the Vice President.

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

The growth of the provisions as to the executive down to the reference to the Committee of Detail has been already given under the head of "Article II., Generally." In regard to the work of that committee,

Randolph's draft affords but little aid in regard to this portion of the executive, but it is worthy of note that Rutledge wrote on the margin as his style, "Governor of the United People and States of America;" and Wilson's much later draft in the committee also at first called him "Governor," but this is cancelled and "President" interlined. The committee reported the following as the first section of the article upon the executive:—

"ARTICLE X., SECTION 1. The executive power of the United States shall be vested in a single person. His style shall be, 'The President of the United States of America,' and his title shall be, 'His Excellency.' He shall be elected by ballot by the legislature. He shall hold his office during the term of seven years; but shall not be elected a second time."

This clause was somewhat debated in the Convention on August 24, and the first portions, as to vesting the executive power in a single person and as to his style and title, were at once agreed to *nem. con.*, but great variety of opinion was shown on almost every other point. Rutledge moved to insert "joint" before "ballot," and the motion was carried, despite Sherman's objection that it would deprive the States of the negative intended to be conferred upon them by the constitution of the Senate. Carroll and Wilson moved to strike out "the legislature" as the body to elect the President, and to insert "the people," but the motion was lost by nine noes to two ayes. Dayton moved to insert after "by ballot by the legislature" the words "each State having one vote," but this motion was also lost. A motion by Charles Pinckney was carried to insert after "legislature" the words "to which election a majority of the votes of the members present shall be required."

Gouverneur Morris expressed himself as opposed to the plan of election by the legislature, and dwelt on the danger of cabal and intrigue. He moved that he "shall be chosen by electors to be chosen by the people of the several States," but his motion was defeated by six noes to five ayes, as was also, soon after, by an evenly divided vote, a motion that he should be "chosen by electors." The subject was then postponed, and was not taken up again, so it went to the Committee on Unfinished Portions. Gouverneur Morris was a member of this committee, and it made an entire change in the mode of electing the President, and reported as follows on September 4:—

"4. After the word 'excellency,' in the 1st section, 10th article, to be inserted: 'he shall hold his office during the term of four years, and, together with the Vice-President chosen for the same term, be elected in the following manner, viz.: Each state shall appoint, in such manner as its legislature may direct, a number of electors equal to the whole number of senators and members of the House of Representatives to which the state may be entitled in the legislature. The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves; and they shall make a list of all the persons voted for, and of the number of votes for each, which list they shall sign and certify, and transmit, sealed, to the seat of the general government, directed to the president of the Senate. The president of the Senate shall, in that house, open all the certificates, and the votes shall be then and there counted. The person having the greatest number of votes shall be the President, if such number be a majority of that of the electors; and if there be more than one who have such a majority, and have an equal number of votes, then the Senate shall immediately choose by ballot one of them for President; but if no person have a majority, then, from the five highest on the list, the Senate shall choose, by ballot, the President; and in every

case, after the choice of the President, the person having the greatest number of votes shall be Vice-President; but if there should remain two or more who have equal votes, the Senate shall choose from them the Vice-President. The legislature may determine the time of choosing and assembling the electors, and the manner of certifying and transmitting their votes."

This subject was taken up on the same day the report was made, and Randolph and Charles Pinckney asked for an explanation of the reasons for changing the mode of electing the President. Gouverneur Morris in reply detailed them as follows:—(1) the danger of intrigue and corruption under the other mode, (2) the inconvenience of the ineligibility necessitated by it, (3) the difficulty of establishing a proper court of impeachments, (4) the fact that nobody had been satisfied with the other mode, (5) the fact that many even wanted an immediate choice by the people, (6) the indispensable need of making the executive independent of the legislature. Mason thought the plan an improvement, particularly in that it removed the danger of cabal and corruption; but he thought it liable to the strong objection that nineteen times out of twenty the President would be chosen by the Senate. This objection was also emphasized by other members. Wilson thought the plan now proposed a great improvement, and said the subject was the most difficult one they had to decide: he had never made up an opinion on it entirely to his satisfaction. He suggested, however, that it might be better to refer the eventual appointment to the legislature rather than to the Senate. Randolph also preferred that method, and asked why the eventual election was referred to the Senate instead of to the

legislature. Gouverneur Morris replied that the reason was because fewer could then maintain to the President that he owed his appointment to them.

The subject was then postponed, but taken up again the next day (September 5) and September 6. Charles Pinckney renewed his opposition, and Rutledge moved to reinstate the plan for election by the legislature; but the change in sentiment was clearly shown by the vote of eight noes to two ayes upon this proposition. A good deal of general discussion was then held. Wilson said that, upon carefully weighing the report, he was forced to the conclusion that it had a strong tendency to aristocracy: the President would not be the man of the people, as he ought to be, but the minion of the Senate. He could not agree to it as it stood, though it contained some valuable improvements. Hamilton said he had been restrained from entering into the discussions by his dislike of the scheme of government in general, but he liked the new plan of electing the President better than the old one.

Randolph had the day before asked why the eventual election of the President was referred to the Senate instead of the legislature, and now (September 5) Wilson made a motion to strike out "Senate" and insert "legislature." Dickinson also was in favor of this, but it was lost by seven noes to three ayes. Gerry suggested that the eventual election should be by six senators and seven representatives, chosen by joint ballot of both houses, but no motion to this effect was made. He later proposed (September 6) to provide that, if a President should not at the end of his term be re-elected by a majority of the electors and no other candidate should have a majority, the eventual election

should be by the legislature. This, he said, would relieve the President from his particular dependence on the Senate for his continuance in office. King and Gouverneur Morris favored this proposal, but it did not reach a vote, and by a vote of seven ayes (noes not counted) the Convention approved\* the provision referring the eventual appointment of the President to the Senate.

In the discussion of this point Sherman had said † that, if the legislature were to have the eventual appointment instead of the Senate, it ought to vote by States, so as to favor the small States in return for the advantage the large States would have in nominating the candidates; and Williamson now suggested that the eventual choice be made by the legislature voting by States and not *per capita*, instead of by the Senate. Sherman then suggested the House of Representatives as preferable to the legislature, and moved accordingly to insert in lieu of “the Senate shall immediately choose,” etc., the following:—“The House of Representatives shall immediately choose by ballot one of them for President, the members from each State having one vote.” Mason expressed his approval of this, as lessening the aristocratic influence of the Senate, and it was almost immediately agreed to. Madison objected that as a majority of the members of the House would constitute a quorum, the result might be that the President would be elected by two States, Virginia and Pennsylvania; and then, on motion of King, there were added the words, “But a quorum for this purpose shall consist of a member or members from two-thirds

\* Elliot, v. 519.

† Ibid., v. 516.

of the States." But the Convention disagreed to the latter portion of King's motion, "and also a majority of the whole number of the House of Representatives."

Mason wanted \* to strike out "five" and insert "three" as the number of the highest candidates to be selected from, and Spaight and Rutledge wanted to make it thirteen, but the Convention adhered to "five." On motion of King and Gerry, the following was inserted on September 6 in the clause as to electors:—  
"But no person shall be appointed an elector who is a member of the legislature of the United States, or who holds any office of profit or trust under the United States."

Saight and Williamson moved † to make the President's term seven years, and, on the defeat of this, six years, but the Convention adhered to four. Some other verbal amendments were made, and the whole then read as follows:—

"The executive power of the United States shall be vested in a single person. His style shall be 'The President of the United States,' and his title shall be 'His Excellency.'

"He shall hold the office during the term of four years; and, together with the Vice-President, chosen for the same term, be elected in the following manner:—

"Each state shall appoint, in such manner as its legislature may direct, a number of electors equal to the whole number of senators and members of the House of Representatives to which the state may be entitled in the legislature.

"But no person shall be appointed an elector who is a member of the legislature of the United States, or who holds any office of profit or trust under the United States.

"The electors shall meet in their respective states, and vote by ballot for two persons, of whom one, at least, shall not be an inhabitant of the same state with themselves; and they shall make

\* Elliot, v. 514.

† Ibid., v. 518.

a list of all the persons voted for, and of the number of votes for each, which list they shall sign and certify, and transmit sealed to the seat of the general government, directed to the president of the Senate.

“The president of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted.

“The person having the greatest number of votes shall be the President (if such number be a majority of the whole number of the electors appointed); and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; the representation from each state having one vote. But if no person have a majority, then, from the five highest on the list, the House of Representatives shall, in like manner, choose by ballot the President. In the choice of a President, by the House of Representatives, a quorum shall consist of a member or members from two-thirds of the states; and in every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice-President. But if there should remain two or more who have equal votes, the Senate shall choose from them the Vice-President.

“The legislature may determine the time of choosing the electors, and of their giving their votes, and the manner of certifying and transmitting their votes. But the election shall be on the same day throughout the United States.”

Gerry called attention \* to the fact that, as the provision stood, five individuals might possibly be competent to an election, as two-thirds of the States is a quorum for this purpose, and five is a majority of two-thirds of the existing number of States; he moved an amendment requiring that in elections by the House no State should vote by less than three members, and where a State had less than three representatives the

\* Elliot, v. 521.

number should be made up by its Senators, and also requiring the concurrence of a majority of the States to a choice. Read referred to the danger in the first part of Gerry's amendment of depriving a State with one member only of any vote at all in the election, if a member should be sick, and Madison suggested another objection,—that the representatives of a minority of the people might reverse the choice of a majority of the States and of the people. He wished some cure for this might be devised. None appears to have been suggested, and Gerry withdrew the first part of his motion, and the second part was agreed to *nem. con.* in the following words, “and a concurrence of a majority of all the States shall be necessary to make such choice,” to follow the words, “a member or members from two-thirds of the States.”

In the form quoted above, with the addition of this amendment, the matter went to the Committee on Style; they changed the arrangement, omitted some minor portions, and reported as follows:—

“ARTICLE II., SECTION 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice-President, chosen for the same term, be elected in the following manner:—

“Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors equal to the whole number of senators and representatives to which the state may be entitled in Congress; but no senator or representative shall be appointed an elector, nor any person holding an office of trust or profit under the United States.

“The electors shall meet in their respective states, and vote by ballot for two persons, of whom one, at least, shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of

votes for each ; which list they shall sign and certify, and transmit sealed to the seat of the general government, directed to the president of the Senate. The president of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates ; and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed ; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President ; and if no person have a majority, then from the five highest on the list the said house shall, in like manner, choose the President. But in choosing the President, the votes shall be taken by states, and not *per capita*, the representation from each state having one vote. A quorum for this purpose shall consist of a member or members from two-thirds of the states ; and a majority of all the states shall be necessary to a choice. In every case, after the choice of the President by the representatives, the person having the greatest number of votes of the electors shall be the Vice-President. But if there should remain two or more who have equal votes, the Senate shall choose from them, by ballot, the Vice-President.

"The Congress may determine the time of choosing the electors, and the time in which they shall give their votes ; but the election shall be on the same day throughout the United States."

On September 15, during the comparison by the Convention of the report of the Committee on Style with the articles agreed on, the following amendments were made :—the first clause was amended \* by inserting "as follows" in place of "in the following manner." The second clause was amended † by transferring the words "shall be appointed an elector" to the end of the clause, and substituting "or" for "nor." The third clause was amended ‡ by striking out as superfluous the words "and not *per capita* ;" and the words "by

\* Elliot, i. 314.

† Ibid., i. 314.

‡ Ibid., i. 314; v. 550.

the representatives" near the end of the same clause were struck out as improper. The fourth clause was amended\* by striking out the words "time in" and inserting "day on," and by striking out the words "but the election shall be on the same day," and inserting "which day shall be the same."

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### ARTICLE II., SECTION I, CLAUSE 5.

No person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

The question of qualifications for the officers of the intended government was one upon which members differed widely. On June 26 Mason had suggested a property qualification for Senators, and on July 26, shortly before the final reference of the resolutions of the Convention to the Committee of Detail, he had moved an elaborate resolution upon the subject, directing the Committee of Detail to receive a clause requiring landed property qualifications for all the chief officers of the United States; and this was approved,† and became the twenty-third resolution of the Convention, after the word "landed" was struck out. The Committee of Detail, however, merely reported a clause

\* Elliot, i. 314.

† See this subject considered under "Defeated Proposals: Qualifications for Officers."

(Article VI., Section 2) authorizing the legislature to provide property qualifications for the members of each House, and did not insert any clause upon the qualifications of the President.

On August 20 Gerry introduced and had referred to the Committee of Detail a resolution instructing them "to report qualifications for the President of the United States;" and on August 22 that committee reported, recommending to add at the end of the first section, tenth article, the words "he shall be of the age of thirty-five years, and a citizen of the United States, and shall have been an inhabitant thereof for twenty-one years." This does not seem to have been acted upon, so it went to the Committee on Unfinished Portions, and in their report of September 4,\* in which was first suggested the plan of election of the President in the main adopted, they reported the following clause upon the subject of the President's qualifications: possibly the exception in favor of citizens at the time of the Constitution's adoption from the general requirement of being natural-born was due to some extent to Wilson's remark (Article I., Section 3, Clauses 1-3), during the discussion of qualifications for Senators, that a provision proposed would put him in the curious position of aiding to draw a Constitution, and yet being incapable of holding office under it:—

"No person except a natural-born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President; nor shall any person be elected to that office who shall be under the age of thirty-five years, and who has not been, in the whole, at least fourteen years a resident within the United States."

\* Elliot, v. 507.

When the above clause came up in the Convention on September 7, it was at once agreed to *nem. con.* without debate; and the Committee on Style reported it back to the Convention as follows:—

“No person except a natural-born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.”

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## ARTICLE II., SECTION 1, CLAUSE 6.

In Case of the Removal of the President from Office, or of his Death, Resignation or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

Randolph's draft for use in the Committee of Detail contains a marginal interlineation by Rutledge,—“The President of the Senate to succeed to the Executive in case of vacancy until the meeting of the legislature,”—and the provision was reported by the committee as follows:—

“ARTICLE X., SECTION 2. . . . In case of his removal, as aforesaid, death, resignation, or disability to discharge the powers and duties of his office, the President of the Senate shall exercise those powers and duties until another President of the United States be chosen, or until the disability of the President be removed.”

When this clause was considered on August 27, Gouverneur Morris objected to the president of the Senate being the provisional successor of the President, and suggested the chief justice, and Madison thought the provision might lead to the Senate's retarding the appointment of a President. Williamson suggested that the legislature ought to have power to provide for occasional successors, and the clause was then postponed on his motion. It was not further acted on by the Convention, so it went to the Committee on Unfinished Portions; and on September 4, at the same time they suggested the plan of election of the President, which was adopted, they reported the above clause in the following form:—

“. . . and, in case of his removal as aforesaid, death, absence, resignation, or inability to discharge the powers or duties of his office, the Vice-President shall exercise those powers and duties until another President be chosen, or until the inability of the President be removed.”

On September 7, during the consideration by the Convention of the method of appointing the Executive, Randolph moved to add the following clause to it:—“The legislature may declare by law what officer of the United States shall act as President, in case of the death, resignation, or disability of the President and Vice-President; and such officer shall act accordingly until the time of electing a President shall arrive.” But Madison observed that this, as worded, would prevent a filling of the vacancy by an intermediate election of a President, and moved to substitute “until such disability be removed, or a President shall be elected.” Randolph’s motion, as amended by Madison, was ap-

proved, and the Committee on Style reported the provision as follows :—

“ In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President ; and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President ; and such officer shall act accordingly, until the disability be removed, or the period for choosing another President arrive.”

The committee had materially changed the provision suggested by Madison and intended to authorize an intermediate election of a President ; and, consequently, on September 15, during the comparison by the Convention of the report of the Committee on Style with the articles agreed on, Madison’s alteration was again inserted by substituting the words “ or a President be elected ” for the words “ or the period for choosing another President arrive.”

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## ARTICLE II., SECTION 1, CLAUSES 7 AND 8.

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be encreased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation :—“ I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States.”

It has been shown that the resolution in regard to the Executive, which was referred to the Committee of Detail, contained a provision that he should "receive a fixed compensation for the devotion of his time to the public service, to be paid out of the public treasury :" and another of the resolutions provided that the Executive, as well as other officers, "ought to be bound by oath to support the Articles of Union." Randolph's draft does not contain anything of interest in carrying out these provisions except a marginal memorandum by Rutledge as to the salary :—" No increase or decrease during the term of service of the Executive." This was adopted by the committee, and the following reported as a part of the second section of Article X. :—

" . . . He shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during his continuance in office. Before he shall enter on the duties of his department, he shall take the following oath or affirmation, 'I, \_\_\_\_\_, solemnly swear (or affirm) that I will faithfully execute the office of President of the United States of America.' . . . "

When these provisions came up for consideration on August 27, the oath to be required of the Executive was enlarged, on motion of Mason and Madison, by adding, "and will, to the best of my judgment and power, preserve, protect, and defend, the Constitution of the United States :" and the clause with this amendment was referred to the Committee on Style. They reported it as follows :—

" The President shall, at stated times, receive a fixed compensation for his services, which shall neither be increased nor diminished during the period for which he shall have been elected.

"Before he enter on the execution of his office, he shall take the following oath or affirmation:—

"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my judgment and power, preserve, protect, and defend the Constitution of the United States."

On September 15, during the comparison by the Convention of the report of the Committee on Style with the articles agreed on, the seventh clause was amended \* by inserting the words "receive for his services a compensation" in lieu of "receive a fixed compensation for his services," and the following words were, on motion of Rutledge and Franklin, added,† by a vote of seven to four, at the end:—"and he shall not receive, within that period, any other emolument from the United States or any of them." This provision, it is to be observed, is to some extent similar to one contained in the series of resolutions introduced into the Convention on August 20 by Charles Pinckney in the following words:—"No person holding the office of President of the United States . . . shall be capable of holding at the same time, any other office of trust or emolument under the United States, or an individual State." This had been referred to the Committee of Detail, but had not been incorporated by them into the Constitution they reported.

On the same day the eighth clause was amended ‡ by inserting "abilities" for "judgment" in the oath to be taken by the President: but this seems to have been interpreted as cancelling "judgment," and inserting "ability" for "power."

\* Elliot, i. 314.

† Ibid., i. 313; v. 549.

‡ Ibid., i. 314.

**ARTICLE II., SECTION 2, CLAUSE 1.**

The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; . . . and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

Charles Pinckney's speeches \* show that his draft provided that the Executive should be commander-in-chief of the land and naval forces; and the New Jersey plan provided in its fourth resolution that the Executive, to consist of more than one person, ought "to direct all military operations:—provided that none of the persons composing the federal executive shall, on any occasion, take command of any troops, so as personally to conduct any military enterprise, as general, or in any other capacity." The resolutions adopted by the Convention and referred to the Committee of Detail did not, however, contain anything upon the subject: but Randolph wrote in his draft, immediately after the power to carry into execution the national laws, quite elaborate provisions as to the federal executive's control of the State militia. These were, however, cancelled later, and Rutledge wrote on the margin instead of them:—"to be commander-in-chief of the land and naval forces of the Union and of the militia of the several States." Rutledge also interlined, at the end of the powers of the executive, "The power of pardoning vested in the Executive: his pardon shall not however be pleadable to an impeachment." In the

\* Moore's American Eloquence, i. 364.

report of the committee these suggestions were adopted, and formed part of the second section of the tenth article, as follows :—

“ . . . He shall have power to grant reprieves and pardons, but his pardon shall not be pleadable in bar of an impeachment. He shall be commander-in-chief of the army and navy of the United States, and of the militia of the several States. . . .”

On August 25, the words “except in cases of impeachment” were inserted after “pardons,” and the words “but his pardon shall not be pleadable in bar of an impeachment” were disapproved; and on August 27 the clause giving the executive the command of the militia of the several States was amended on motion of Sherman by adding the words “when called into the actual service of the United States.” The Committee on Style reported the clause as follows :—

“ SECTION 2. The President shall be commander-in-chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States.

“ . . . And he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.”

The committee had apparently not approved of the proposal contained in a motion which was made by Randolph on September 10 relating to pardons in treason, and referred to them, but no record of which has been preserved. On September 15, however, during the comparison by the Convention of the report of the Committee on Style with the articles agreed on, Randolph probably made the same proposal ; he moved to amend the first clause of the second section of Article II. so as to except cases of treason from

the President's power of pardon ; the President himself might be guilty, and the traitors might be his own instruments. Mason supported the motion, but Gouverneur Morris would prefer that there should be no pardon for treason rather than let the power devolve on the legislature. Wilson thought the power should remain with the President, and remarked that he could be impeached, if guilty. King suggested to join the Senate with the President in pardoning, and Madison approved of this. No such motion was, however, made, and Randolph's motion was lost by two votes to eight.

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## ARTICLE II., SECTION 2, CLAUSE 1.

[The President shall] . . . he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, . . .

This clause grew out of the efforts of some members to establish a cabinet for the President. Charles Pinckney's speeches \* show that his draft provided that the executive should have the right to consider the principals of the departments of foreign affairs, of war, of the treasury, and of the admiralty, his cabinet ; and at an early stage of the proceedings, on June 1, Gerry stated that he was in favor of annexing a council to the executive. There was, however, nothing upon the subject in the resolutions referred to the Committee of Detail, nor does either Randolph's committee draft or

\* Moore's American Eloquence, i. 364.

the draft they reported to the Convention on August 6 contain any provision in regard to a cabinet or council. On August 18, however, Ellsworth observed that no council had yet been provided for the President, and said that he thought there ought to be one; he suggested that it should be composed of the president of the Senate, the chief justice, and the ministers of foreign and domestic affairs, war, finance, and marine. They should only advise the President, he thought, and not conclude him. Charles Pinckney wanted the proposition to lie over, as Gouverneur Morris had given notice of a like proposal; his own idea was that the President should be authorized to call for advice or not, as he pleased. An able council would thwart him, while he would shelter himself under the sanction of a weak one. Gerry was opposed to letting the heads of departments have anything to do with legislation, as they will be fully taken up with other matters; he mentioned in particular the chief justice. Dickinson thought that the great appointments should be made by the legislature, and that they could then be properly consulted by the executive. The subject then lay over by general consent.

On August 20, Gouverneur Morris introduced and had referred to the Committee of Detail his plan; he proposed a council of state, to consist of the chief justice and the secretaries of domestic affairs, of commerce and finance, of foreign affairs, of war, of the marine, and of state; and he provided that the President might submit any matter to this council for their discussion, but should "in all cases exercise his own judgment, and either conform to such opinions or not, as he may think proper." On August 22 this com-

mittee reported, recommending to insert the following after the second section as a third section :—

“The President of the United States shall have a privy council, which shall consist of the president of the Senate, the speaker of the House of Representatives, the chief justice of the Supreme Court, and the principal officer in the respective departments of foreign affairs, domestic affairs, war, marine, and finance, as such departments of office shall from time to time be established; whose duty it shall be to advise him in matters, respecting the execution of his office, which he shall think proper to lay before them; but their advice shall not conclude him, nor affect his responsibility for the measures which he shall adopt.”

This clause does not seem to have been considered by the Convention, and the matter went, therefore, to the Committee on Unfinished Portions, which reported on September 4 in part as follows upon the powers of the President :—

“After the words ‘into the service of the United States,’ in the 2d section 10th article, add, ‘and may require the opinion in writing of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices.’”

When this clause came up in the Convention, on September 7, Mason objected strongly to the rejection of a council for the President, and said “the grand seignor himself had his divan:” and he moved the following, which he had suggested in debate earlier the same day :—

“That it be an instruction to the committee of the states to prepare a clause or clauses for establishing an executive council, as a council of state for the President of the United States; to consist of six members, two of which from the Eastern, two from the Middle, and two from the Southern States; with a

rotation and duration of office similar to those of the Senate; such council to be appointed by the legislature, or by the Senate."

Franklin and Madison were in favor of the motion, and Wilson and Dickinson were in favor of some sort of council. Gouverneur Morris was against it, and explained that the committee had considered the question, but thought that it would merely result in the President's acquiring their protection for his wrong measures. Mason's motion was lost by eight States to three, and the clause as reported was approved, and later reported in the same language by the Committee on Style.

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## ARTICLE II., SECTION 2, CLAUSE 2.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur. . . .

This clause originated entirely in the Committee of Detail, and in the later proceedings of the Convention. Randolph wrote at one time in his committee draft among the legislative powers the following words:—

"3. To make treaties of commerce under the foregoing restrictions: 4. To make treaties of peace or alliance under the foregoing restrictions, and without the surrender of territory for an equivalent, and in no case unless a superior title."

These powers are, however, marked by him on the margin, "qu: as to senate," and were later cancelled. He had also inserted at one time a legislative power "17. To send ambassadors," but had later cancelled this,

too. All these powers were then transferred to the Senate, and he wrote in a subsequent part of his draft, "3. The powers destined for the Senate peculiarly are 1. To make treaties of commerce: 2. To make treaties of peace and alliance: 3. To appoint the judiciary: 4. [This in Rutledge's hand-writing.] To send ambassadors." The Committee of Detail adopted in the main these latter ideas, and vested the treaty-making power in the Senate by the first section of the ninth article, which read:—"The Senate of the United States shall have power to make treaties, and appoint ambassadors, and judges of the Supreme Court." When this clause came up in the Convention on August 23, Gouverneur Morris doubted whether he should agree to it at all, but moved an amendment that "no treaty shall be binding on the United States which is not ratified by law." The inconvenience of this in such cases as treaties of alliance for war was pointed out; and, after some slight debate, the whole clause was referred back to the Committee of Detail.

This committee, however, did not make any further report upon the subject, so it went to the Committee on Unfinished Portions, and they reported on September 4, transferring the power to make treaties to the President by and with the advice and consent of the Senate. This idea was probably derived from a suggestion of Gorham, made during the discussion of the judiciary. It has been seen that the section of the draft of August 6 now under discussion vested in the Senate the appointment of the judges and some other officers, as well as the power to make treaties; but the appointment of officers by so large a body as the Senate met with much objection, and on July 18, during the discussion

of the appointment of the judges, Gorham had suggested that they be appointed by the executive with the advice and consent of the second branch (Article III., Generally) in the mode prescribed by the Constitution of Massachusetts ; he said that “this mode had been long practised in that country, and was found to answer perfectly well.” Motions in favor of this suggestion were defeated, and the Convention resolved at that time to leave the appointment of the judges to the Senate ; but it is likely that Gorham’s proposal led to the change, and the Committee on Unfinished Portions in their report of September 4 vested both the power to make treaties and to appoint officers generally in the President, by and with the advice and consent of the Senate ; they reported as follows :—

“The President, by and with the advice and consent of the Senate, shall have power to make treaties ; . . . But no treaty shall be made without the consent of two thirds of the members present.”

When this provision came up in the Convention, on September 7 and 8, Wilson moved to add the words “and House of Representatives” after “Senate,” but there was no debate upon the motion, and Pennsylvania alone voted in its favor.

The clause requiring two-thirds of the Senators present to ratify a treaty was a subject of a good deal of difference of opinion. Wilson and King objected to it, and Madison moved to insert an exception as to treaties of peace, so that they could be ratified by a majority, and this was agreed to *nem. con.*, but was again struck out the next day (September 8) by eight States to three. King and Wilson wanted to strike out entirely the requirement of two-thirds, but only

Delaware supported them.\* Rutledge and Gerry then moved that "no treaty shall be made without the consent of two-thirds of all the members of the Senate," in accordance with the example in the present Congress, but the difference that the President's consent will be necessary was pointed out, and the motion was defeated, as was also one of Sherman, that "no treaty shall be made without a majority of the whole number of the Senate," and also another of Williamson and Gerry to require previous notice to members and a reasonable time to attend. The clause as reported was then approved, and the Committee on Style reported it later as follows:—

"He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the senators present concur."

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## ARTICLE II., SECTION 2, CLAUSES 2 AND 3.

. . . and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

Charles Pinckney's speeches † show that his draft of a constitution called for an executive with power to

\* Elliot, v. 524-27.

† Moore's American Eloquence, i. 364.

appoint all officers except judges and foreign ministers, but there is nothing to show how he provided for the selection of these latter. The New Jersey resolutions conferred power on the executive to appoint the judges and all federal officers not otherwise provided for; and these two outlines were referred to the Committee of Detail, though without the approval of the Convention. The only provisions upon the subject which the Convention had approved were contained in the fourteenth and twelfth resolutions referred to that committee: these provided respectively for a national judiciary, which should be appointed by the second branch of the national legislature, and for a national executive with power "to appoint to offices in cases not otherwise provided for."

Randolph's committee draft at one time conferred upon the legislature the power to send ambassadors, but this was cancelled; and the same power was inserted, in the handwriting of Rutledge, among those designed peculiarly for the Senate. To this same branch also was assigned by Randolph's draft the right to appoint the judiciary, while among the powers conferred on the executive was one "to appoint to offices, not otherwise provided for by the constitution." The committee, in the draft reported on August 6, provided by the first section of the ninth article that "the Senate of the United States shall have power to . . . appoint ambassadors, and judges of the Supreme Court;" and by the second section of the tenth article, that "He [the President] shall . . . appoint officers in all cases not otherwise provided for by this Constitution."

In the discussion of the judicial department on July

18, Gorham had moved that the judges should be appointed by the executive with the advice and consent of the second branch, in the mode prescribed by the constitution of Massachusetts, and upon the defeat of this Madison had moved that they be appointed by the executive subject to disapproval by two-thirds of the Senate; but this was also defeated on the 21st, and the appointment of the judges by the Senate approved, and the resolution so referred to the Committee of Detail.

When the clause as to the Senate's appointing ambassadors and judges of the Supreme Court came up in the Convention on August 23, Gouverneur Morris and Wilson argued against the appointment of officers by so large a body as the Senate, and Morris doubted whether he should agree to it at all. After some slight debate, and after the words "and other public ministers" had been inserted after "ambassadors," the clause was referred again to the Committee of Detail.

When the clause as to the appointment of officers by the President in all cases not otherwise provided for came up in the Convention on August 24, Madison moved to amend so as to read that he may appoint "to offices," in order to make it clear that there was no intention to authorize him to appoint officers without a previous creation of the office by the legislature. This was carried, and then Dickinson moved to amend so as to read "and shall appoint to all offices established by this Constitution, except in cases herein otherwise provided for; and to all offices which may hereafter be created by law." This was also carried, and then Dickinson moved further to amend by adding after the above the words "except where, by law, the appoint-

ment shall be vested in the legislatures or executives of the several states;" but the motion was negative without a count of votes, Wilson and Gouverneur Morris urging that its result would be to make the States able to dictate terms to Congress and secure the appointments for themselves.

It has been seen that the clause of the draft of August 6 referring to the Senate the power to appoint certain officers was referred again to the Committee of Detail. This committee did not, however, report: so the matter went to the Committee on Unfinished Portions, and they treated the whole subject of appointments as before them, and reported on September 4, transferring the power to appoint officers generally, as well as the power to make treaties, to the President, by and with the advice and consent of the Senate. This idea was doubtless derived from the above-mentioned suggestion of Gorham to adopt the method of appointment practised in Massachusetts (see above, and also "Article III., Generally"), which had, however, been defeated by the Convention at the time Gorham suggested it. The committee reported the matter in the following form:—

" . . . and he shall nominate, and, by and with the advice and consent of the Senate, shall appoint ambassadors, and other public ministers, judges of the Supreme Court, and all other officers of the United States, whose appointments are not otherwise herein provided for."

When this clause came up in the Convention on September 7, the language as to the President's power of appointment was changed in one particular to correspond with a former phrase,—"ambassadors, other public ministers, and consuls,"—and then agreed to.

Wilson had objected to the mode of appointment, but he made no motion.

On motion of Spaight, the following was inserted:— “the President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of the next session of the Senate.”

Gerry moved, on September 8, that “no officer shall be appointed but to offices created by law,” but it was rejected as unnecessary. He later moved, “the legislature shall have the sole right of establishing offices not heretofore provided for,” but this was also negatived. The matter was then referred to the Committee on Style in the form which has been shown, and they reported it as follows:—

“ . . . and he shall nominate, and by and with the advice and consent of the Senate, shall appoint, ambassadors, other public ministers, and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for.

“ The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions, which shall expire at the end of the next session.”

On September 15, during the comparison by the Convention of the report of the Committee on Style with the articles agreed on, the clause as to the President’s power of appointment was amended by adding at the end the words “and which shall be established by law;” and on the same day Gouverneur Morris moved to amend further by adding at the same place the following clause:—“but the Congress may by law vest the appointment of such inferior officers as they think proper in the President alone, in the courts of law, or

in the heads of departments." This suggestion was probably led to by the objections made to the Senate either as an original appointing body or as one to confirm the appointments of the President. Some members thought the Senate would have to be constantly in session for this purpose, but King had answered\* that he supposed the minor officers would be appointed by the higher officers of the departments. Sherman seconded Gouverneur Morris's motion, but Madison thought it did not go far enough, if necessary at all, for superior officers below the heads of departments ought, in some cases, to have the appointments to minor offices. Morris thought there was no necessity for this, for blank commissions could be sent. The motion was lost by an even division, but it was urged that it be put again, as some such provision was too necessary to be omitted. The motion was then agreed to *nem. con.*

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## ARTICLE II., SECTION 3.

He shall from time to time give to the Congress Information of the state of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and, in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

Charles Pinckney's speeches† show that his draft provided that the executive might convene and pro-

\* Elliot, v. 523.

† Moore's American Eloquence, i. 364.

rogue the legislature upon special occasions when they could not agree, but the resolutions of the Convention contained nothing upon these subjects nor upon the others here concerned. Randolph's committee draft, however, contains among the powers of the executive the following memoranda:—"receiving ambassadors: commissioning officers: convene legislature;" and Rutledge wrote on the margin that the executive "shall propose to the Legislature from Time to Time by Speech or Message such Measures as concern the Union." The Committee of Detail reported in part as follows in the second section of the tenth article:—

"He shall, from time to time, give information to the legislature of the state of the Union. He may recommend to their consideration such measures as he shall judge necessary and expedient. He may convene them on extraordinary occasions. In case of disagreement between the two Houses, with regard to the time of adjournment, he may adjourn them to such time as he thinks proper. He shall take care that the laws of the United States be duly and faithfully executed. He shall commission all the officers of the United States; . . . He shall receive ambassadors, and may correspond with the supreme executives of the several states."

This section was taken up in the Convention on August 24, and the discussion continued on the 25th. The clause as to receiving ambassadors was enlarged to read "he shall receive ambassadors and other public ministers;" and on motion of Gouverneur Morris the words authorizing the President to correspond with the supreme executives of the several States were cancelled, on the ground that they might imply that he could not correspond with others.

On September 8 McHenry called attention to the fact that the President had not yet been authorized to

convene the Senate by itself, and moved to amend Article X., Section 2, by striking out the clause as to convening the legislature and inserting, "he may convene both or either of the Houses on extraordinary occasions," and this was soon agreed to, though Wilson said he should vote against it, because it implied that the Senate might be in session, when the legislature was not, which he thought improper.

The Committee on Style transposed this matter somewhat and reported it as follows:—

"SECTION 3. He shall, from time to time, give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient. He may, on extraordinary occasions, convene both houses, or either of them; and in case of disagreement between them with respect to the time of adjournment, he may adjourn them to such time as he shall think proper. He shall receive ambassadors and other public ministers. He shall take care that the laws be faithfully executed; and shall commission all the officers of the United States."

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## ARTICLE II., SECTION 4.

The President, Vice President, and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

Charles Pinckney's speeches\* show that his draft contained a clause making the President impeachable, and the Virginia resolutions, though they did not specifically provide for this, possibly recognized impliedly

\* Moore's American Eloquence, i. 364.

the same thing, for they required an oath from the executive and other officers and gave the judiciary jurisdiction in "impeachments of any national officers." When the Convention came on June 2 to discuss the resolution of the Virginia plan in regard to the executive, Dickinson moved to add, "that the executive be made removable by the national legislature, on the request of a majority of the legislatures of individual states," and there was quite a discussion of the subject. Some wanted to make him removable by the national legislature alone, but both this and Dickinson's proposal were defeated; and on motion of Williamson and Davie it was agreed to add the words, "and to be removable on impeachment and conviction of malpractice or neglect of duty:" and these words were contained in the ninth resolution reported from the committee of the whole on June 13.

The New Jersey plan provided by the fourth resolution for an executive to be "removable by Congress, on application by a majority of the executives of the several States;" but the Convention went on with the consideration of the resolutions reported from the committee of the whole, and on July 20 took up the question of impeachments of the executive. There was much difference of opinion, and some members opposed any impeachment of the executive himself, and thought his agents should alone be punished. The Convention adhered, however, by a vote of eight to two, to the provision already reported, and the twelfth resolution referred to the Committee of Detail provided for a national executive to consist of a single person, "to be removable on impeachment, and conviction of malpractice or neglect of duty," while the sixteenth resolution

provided that the jurisdiction of the national judiciary should extend to certain described cases, "and to such other questions as involve the national peace and harmony."

Randolph's committee draft contained a clause as to the executive "to be removable on impeachment, made by the house of representatives, and on conviction of malpractice or neglect of duty before the supreme judiciary :" but the words, "malpractice or neglect of duty" are cancelled, and "Treason, Bribery, or Corruption," interlined in their stead in Rutledge's hand-writing. These suggestions were carried out by the committee, and they reported as follows in regard to the President in the second section of Article X. of the draft of August 6 :—

" . . . He shall be removed from his office on impeachment by the House of Representatives, and conviction, in the supreme court, of treason, bribery, or corruption . . . "

This was postponed on August 27, on motion of Gouverneur Morris, who thought the tribunal an improper one, particularly if the first judge was to be of the privy council. Not being taken up again by the Convention it went to the Committee on Unfinished Portions, and on September 4, they reported as follows :—

"The latter part of the second section, Article X. to read as follows :—'He shall be removed from his office, on impeachment by the House of Representatives, and conviction by the Senate, for treason or bribery' . . . "

That portion of this provision which concerns the forum in which impeachments should be tried has been considered in another place (Article I., Section 3,

Clause 6). In considering the other branches of the clause, on September 8, Mason objected to its being restricted to cases of treason or bribery; he moved to add "or maladministration." Madison thought the term so vague that it would be equivalent to establishing a tenure during the pleasure of the Congress, and Mason substituted the term, "other high crimes and misdemeanors against the State," which was agreed to, but "United States" was unanimously substituted for "State" a little later. The following was also added to the clause:—"The Vice-President, and other civil officers of the United States, shall be removed from office on impeachment and conviction as aforesaid," and with these amendments the matter went to the Committee on Style, which reported it as follows:—

"SECTION 4. The President, Vice-President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors."

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### ARTICLE III., GENERALLY.

Charles Pinckney's speeches\* show that his draft gave Congress power to establish federal courts of admiralty and for some other purposes which are not specified; and the ninth of the Virginia resolutions read as follows:—

"Resolved, that a national judiciary be established; to hold their offices during good behavior, and to receive punctually, at stated times, fixed compensation for their services, in which no

\* Moore's American Eloquence, i. 367.

increase or diminution shall be made so as to affect the persons actually in office at the time of such increase or diminution. That the jurisdiction of the inferior tribunals shall be to hear and determine, in the first instance, and of the supreme tribunal to hear and determine, in the *dernier resort*, all piracies and felonies on the high seas; captures from an enemy; cases in which foreigners, or citizens of other states, applying to such jurisdictions, may be interested; or which respect the collection of the national revenue, impeachments of any national officers, and questions which may involve the national peace or harmony."

When the Convention took this clause up on June 4, the words "That a national judiciary be established" were agreed to, and the words, "to consist of one supreme tribunal, and of one or more inferior tribunals" were then added,\* and the next day the words, "one or more" were cancelled. The words "to be chosen by the national legislature" being under consideration on June 5, "national legislature" was stricken out and a blank left, to be filled up later; and then some later portions were added and others postponed, so that the parts of the clause which had been approved read as follows:—

"Resolved, that a national judiciary be established to consist of one supreme and inferior tribunals; to be chosen by ; to hold their office during good behavior; and to receive punctually at stated times, a fixed compensation for their services, in which no increase or diminution shall be made, so as to affect the persons actually in office at the time of such increase or diminution."

On June 5 Rutledge moved to strike out the words, "and of inferior tribunals," on the grounds that the State tribunals ought to be left to decide in the first

\* Elliot, i. 144, 160-61; v. 128, 155.

instance, subject to an appeal, and that the provision would create great obstacles to the adoption of the system. Madison, Wilson, and Dickinson opposed the motion, and insisted that the right of appeal would be entirely insufficient to correct many errors; they thought a government without a proper executive and judiciary would be the mere trunk of a body. Rutledge's motion was, however, carried, whereupon, on the insistence of Dickinson, Wilson, and Madison as to the importance of at least the *power* to establish such tribunals in case of need, the resolution was amended by adding the words, "that the national legislature be empowered to institute inferior tribunals."

On June 12 and 13 various motions were made as to the jurisdiction of the Supreme Court, but finally on motion of Randolph and Madison the following was adopted as a substitute for the language used in the Virginia resolution:—"that the jurisdiction of the national judiciary shall extend to cases which respect the collection of the national revenue, impeachments of any national officers, and questions which involve the national peace and harmony." And on the same day (June 13) the earlier part of this clause was, on motion of Madison, amended, by inserting after "one supreme tribunal" the words, "the judges of which to be appointed by the second branch of the national legislature." Charles Pinckney and Sherman had wanted them to be appointed by the whole legislature, but withdrew their motion upon Madison's objecting to such a method, and urging the Senate instead.

This was the end of the discussion of this subject in committee of the whole, and the matter then read as follows:—

11. "Resolved, That a national judiciary be established, to consist of one supreme tribunal, the judges of which shall be appointed by the second branch of the national legislature, to hold their offices during good behavior, and to receive punctually, at stated times, a fixed compensation for their services, in which no increase or diminution shall be made so as to affect the persons actually in office at the time of such increase or diminution.

12. "Resolved, That the national legislature be empowered to appoint inferior tribunals.

13. "Resolved, That the jurisdiction of the national judiciary shall extend to all cases which respect the collection of the national revenue, impeachments of any national officers, and questions which involve the national peace and harmony."

A few days later the New Jersey plan was introduced, the fifth resolution of which read as follows:—

"Resolved, That a federal judiciary be established, to consist of a supreme tribunal, the judges of which to be appointed by the executive, and to hold their offices during good behavior; to receive punctually, at stated times, a fixed compensation for their services, in which no increase nor diminution shall be made so as to affect the persons actually in office at the time of such increase or diminution. That the judiciary so established shall have authority to hear and determine, in the first instance, on all impeachments of federal officers, and, by way of appeal, in the dernier resort, in all cases touching the rights of ambassadors; in all cases of captures from an enemy; in all cases of piracies and felonies on the high seas; in all cases in which foreigners may be interested; in the construction of any treaty or treaties, or which may arise on any of the acts for the regulation of trade, or the collection of the federal revenue: that none of the judiciary shall, during the time they remain in office, be capable of receiving or holding any other office or appointment during their term of service, or for thereafter."

The Convention, however, did not approve the New Jersey plan, but took up again the resolutions agreed

upon in committee of the whole. On July 18 and 21 the whole of the eleventh resolution was approved, except that the provision against increase of salary was stricken out; this was done on motion of Gouverneur Morris, who thought the legislature should not be so much hampered. Madison thought this would increase their dependence on the legislature, and suggested that it might be possible to guard against the variations in the value of money by taking wheat or some other thing of permanent value as a standard, but Gouverneur Morris argued that not only the value of money but the state of society may alter, and that the salary should always be regulated by the manners and style of living. The words as to "no increase" were then struck out by six votes to two.

The point most discussed was as to the method of appointment of the judges. Gorham suggested that they be appointed by the executive, with the consent and advice of the second branch, in the mode practised by the constitution of Massachusetts. Wilson preferred to have them appointed by the executive alone, while Madison suggested that they might be appointed by that branch, with the concurrence of one-third at least of the upper House. Luther Martin, Sherman, and Bedford thought their appointment should remain with the Senate. Wilson's motion was defeated, and Gorham then moved "that the judges be nominated and appointed by the executive, by and with the advice and consent of the second branch; and every such nomination shall be made at least              days prior to such appointment." This was lost by an evenly divided vote, and Madison then moved "that the judges should be nominated by the executive, and

such nomination should become an appointment if not disagreed to within              days by two-thirds of the second branch." This was postponed, and was defeated on July 21, and the provision for their appointment by the second branch was approved by six to three.

The twelfth resolution, "that the national legislature be empowered to institute inferior tribunals," was considered on July 18, and was opposed by Butler and Luther Martin, and supported by Gorham, Randolph, and Gouverneur Morris. Gorham observed that there were already federal courts in the States, and that no objections were made. Sherman was willing to grant the power to establish the courts, but thought that the state tribunals should be used wherever possible. The clause was approved *nem. con.* after but a short discussion.

The thirteenth resolution as to the jurisdiction of the national judiciary met with several criticisms as to its language, and after the words extending it to the impeachment of any national officers were struck out on July 18, the whole clause was recast by Madison to read :—"That the jurisdiction of the national judiciary shall extend to cases arising under laws passed by the general legislature, and to such other questions as involve the national peace and harmony," and was so agreed to *nem. con.*

The resolutions of the Convention upon the subject of the judiciary referred to the Committee of Detail were therefore as follows :—

"14. *Resolved*, That a national judiciary be established, to consist of one supreme tribunal, the judges of which shall be appointed by the second branch of the national legislature; to hold their offices during good behavior; to receive punctually, at stated

times, a fixed compensation for their services, in which no diminution shall be made, so as to affect the persons actually in office at the time of such diminution.

“15. *Resolved*, That the national legislature be empowered to appoint inferior tribunals.

“16. *Resolved*, That the jurisdiction of the national judiciary shall extend to cases arising under laws passed by the general legislature, and to such other questions as involve the national peace and harmony.”

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### ARTICLE III., SECTION 1.

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. . . .

In carrying out the resolutions of the Convention upon the subject of the judiciary, which have been followed under the heading of “Article III., Generally,” Randolph did little more in his draft than make a separate memorandum of the provisions in question; touching the matter here concerned, he wrote:—“the judiciary shall consist of one supreme tribunal . . . and of such inferior tribunals, as the legislature may establish.” The committee reported the following as the first section of the eleventh article:—

“The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as shall, when necessary, from time to time, be constituted by the legislature of the United States.”

When this clause came up before the Convention on August 27, Dr. Johnson suggested that the judicial power ought to extend to equity as well as law, and accordingly moved to insert “both in law and equity”

after the words “United States.” Read objected to vesting these powers in the same court, but the Convention agreed to the amendment, and the clause was later referred, with this amendment, to the Committee on Style, which reported it as follows:—

“ARTICLE III., SECTION 1. The judicial power of the United States, both in law and equity, shall be vested in one Supreme Court, and in such inferior courts as the Congress may, from time to time, ordain and establish. . . .”

On September 15, during the comparison by the Convention of the report of the Committee on Style with the articles agreed on, the words “both in law and equity” were stricken out,\* doubtless because it was thought that the extension of the power to cases in equity was more properly provided for in the second section of the same article.

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### ARTICLE III., SECTION 1.

. . . The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in office.

As to these provisions, also, Randolph’s draft does little more than carry out literally the directions upon the subjects, which were referred and have been followed under “Article III., Generally.” He wrote:—“all the judges shall hold their offices during good behaviour; and shall receive punctually at stated times a compensation for their services, to be settled by the

\* Elliot, i. 314.

legislature, in which no diminution shall be made, so as to affect the persons, actually in office at the time of such diminution." The committee reported as follows upon the same subjects by the second section of the eleventh article:—

"The judges of the supreme court, and of the inferior courts, shall hold their offices during good behavior. They shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office."

When this clause came up before the Convention, on August 27, Dickinson moved a proviso to make the judges removable "by the executive on the application by the Senate and House of Representatives," and Gerry and Sherman supported him: but Gouverneur Morris, Rutledge, Wilson, and Randolph were against it. Gouverneur Morris thought it would be a contradiction in terms to provide for a tenure during good behavior and yet say that they might be removed by "so arbitrary an authority," and Rutledge thought it was an insuperable objection to the motion that the Supreme Court was to judge between the United States and particular States. The motion was defeated. Madison wanted to reinstate the provision to prohibit an increase as well as a diminution of a judge's salary, but this was lost, as was also another to provide that any law to make such increase should not take effect for three years after its passage. The Committee on Style reported the clause as follows:—

"ARTICLE III., SECTION 1. . . . The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office."

### ARTICLE III., SECTION 2, CLAUSES 1 AND 2.

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority ;—to all Cases affecting Ambassadors, other public Ministers and Consuls ;—to all Cases of admiralty and maritime Jurisdiction ;—to Controversies to which the United States shall be a Party ;—to Controversies between two or more States ;—between a State and Citizens of another State ;—between Citizens of different States ;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions and under such Regulations as the Congress shall make.

The fifth resolution of the New Jersey plan provided for a supreme court only, and gave it “authority to hear and determine, in the first instance, on all impeachments of federal officers, and, by way of appeal, in the *dernier ressort*, in all cases touching the rights of ambassadors ; in all cases of captures from an enemy ; in all cases of piracies and felonies on the high seas ; in all cases in which foreigners may be interested ; in the construction of any treaty or treaties, or which may arise on any of the acts for the regulation of trade, or the collection of the federal revenue.” This clause did not, however, receive the approval of the Convention, and the only provision which was referred to the Committee of Detail with such approval was that contained in the sixteenth resolution, which has been followed under “Article III., Generally,” in the words, “that

the jurisdiction of the national judiciary shall extend to cases arising under laws passed by the general legislature, and to such other questions as involve the national peace and harmony."

In elaborating this very general proposition, Randolph wrote in his draft :—

"The jurisdiction of the supreme tribunal shall extend, 1, to all cases arising under laws passed by the general Legislature; 2, to impeachments of officers; and 3, to such other cases as the national legislature may assign, as involving the national peace and harmony; in the collection of the revenue; in disputes between citizens of different States [here Rutledge has added on the margin 'in disputes between a State and a citizen or citizens of other States']; in disputes between different States; and in disputes in which subjects or citizens of other countries are concerned [here Rutledge has added 'in cases of admiralty jurisdiction']. But this supreme jurisdiction shall be appellate only; except in cases of impeachment and in those instances, in which the Legislature shall make it original; and the legislature shall organize it. The whole or a part of the jurisdiction aforesaid, according to the discretion of the legislature, may be assigned to the inferior tribunals as original tribunals."

It is also interesting to notice that at one time Randolph wrote in his draft, directly after his treatment of the legislative powers, the following provision as to the jurisdiction of the supreme judiciary :—

"All laws of a particular State repugnant hereto shall be void; and in the decision thereon, which shall be vested in the supreme judiciary, all incidents, without which the general principle cannot be satisfied, shall be considered as involved in the general principle."

This suggested clause is, however, cancelled in the draft, and was hence doubtless disapproved by the committee or by the later judgment of Randolph himself.

It has more bearing on another part of the Constitution, and is accordingly more fully followed out under Article VI., Section 2. The Committee of Detail reported as follows:—

“ARTICLE XI., SECTION 3. The jurisdiction of the supreme court shall extend to all cases arising under laws passed by the legislature of the United States; to all cases affecting ambassadors, other public ministers and consuls; to the trial of impeachments of officers of the United States; to all cases of admiralty and maritime jurisdiction; to controversies between two or more states, (except such as shall regard territory or jurisdiction;) between a state and citizens of another state; between citizens of different states; and between a state, or the citizens thereof, and foreign states, citizens, or subjects. In cases of impeachment, cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, this jurisdiction shall be original. In all the other cases before mentioned, it shall be appellate, with such exceptions, and under such regulations, as the legislature shall make. The legislature may assign any part of the jurisdiction above mentioned, (except the trial of the President of the United States,) in the manner and under the limitations which it shall think proper, to such inferior courts as it shall constitute from time to time.”

When this clause came up before the Convention on August 27, Madison and Gouverneur Morris moved to insert the words “to which the United States shall be a party” after the word “controversies,” and the motion was agreed to *nem. con.* On August 20 Charles Pinckney had introduced into the Convention and had referred to the Committee of Detail a series of resolutions, among which was one bearing on pretty much the same point in the following words:—“The jurisdiction of the Supreme Court shall be extended to all controversies between the United States and an individual state, or the United States and the citizens of an individual

state." And upon this that committee had reported on August 22, recommending to insert between the fourth and fifth lines of the third section of the eleventh article, after the word "controversies," the words "between the United States and an individual State, or the United States and an individual person." This clause was not, however, acted on, and went therefore to the Committee on Unfinished Portions, but it also failed to report on it. The motion of Madison and Gouverneur Morris attained the same purpose in better language.

Dr. Johnson moved, on August 27, to insert "this Constitution and the" before "laws," so as to extend the jurisdiction also to cases arising under the Constitution alone; but Madison thought it was going too far to extend the jurisdiction to cases arising under the Constitution, and that it ought to be limited to cases of a judicial nature. The right of expounding the Constitution, he said, in cases not of this nature, ought not to be given to that department. But it was generally supposed that the jurisdiction was constructively limited to such cases, and the motion was agreed to *nem. con.*

On motion of Rutledge, the same clause was further amended on August 27 so as to extend the jurisdiction to "treaties made or which shall be made under their authority," conformably to a preceding amendment in another place (see Article VI., Section 2), and on motion of Madison and Gouverneur Morris the words "the judicial power" were substituted for "the jurisdiction of the Supreme Court."

On motion of Sherman, the words "between citizens of the same State claiming lands under grants of

different States" were inserted after "between citizens of different States," according to the provision in Article IX. of the Confederation.

The words in regard to impeachments were postponed on August 27, and several minor amendments were made on that and the succeeding day, when the whole read :—

"The judicial power shall extend to all cases both in law and equity arising under this Constitution and the laws of the United States, and treaties made or which shall be made under their authority ; to all cases affecting ambassadors, other public ministers and consuls ; to all cases of admiralty and maritime jurisdiction ; to controversies to which the United States shall be a party ; to controversies between two or more States, except such as shall regard territory or jurisdiction ; between a State and citizens of another State ; between citizens of different States ; between citizens of the same State claiming lands under grants of different States ; and between a State or the citizens thereof, and foreign States, citizens, or subjects. In cases affecting ambassadors, other public ministers, and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, it shall be appellate, both as to law and fact, with such exceptions, and under such regulations, as the legislature shall make."

It should be noted also that the draft reported by the Committee of Detail contained in Sections 2 and 3 of Article IX. an elaborate provision for the Senate's trying disputes between States respecting jurisdiction or territory, and disputes concerning lands claimed under grants of different States. Upon this subject Randolph's draft contains the following among the legislative powers, "to adjust upon the plan heretofore used all disputes between the States respecting territory or jurisdiction [the last four words in Rutledge's

handwriting]." The provision in question reported by the committee was :—

"SECTION 2. In all disputes and controversies now subsisting, or that may hereafter subsist, between two or more states, respecting jurisdiction or territory, the Senate shall possess the following powers :—Whenever the legislature, or the executive authority, or lawful agent of any state, in controversy with another, shall, by memorial to the Senate, state the matter in question, and apply for a hearing, notice of such memorial and application shall be given, by order of the Senate, to the legislature, or the executive authority, of the other state in controversy. The Senate shall also assign a day for the appearance of the parties, by their agents, before that House. The agents shall be directed to appoint, by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question. But if the agents cannot agree, the Senate shall name three persons out of each of the several states; and from the list of such persons, each party shall alternately strike out one, until the number shall be reduced to thirteen; and from that number not less than seven, nor more than nine, names, as the Senate shall direct, shall, in their presence, be drawn out by lot; and the persons whose names shall be so drawn, or any five of them, shall be commissioners or judges to hear and finally determine the controversy; provided a majority of the judges who shall hear the cause agree in the determination. If either party shall neglect to attend at the day assigned, without showing sufficient reasons for not attending, or being present shall refuse to strike, the Senate shall proceed to nominate three persons out of each state, and the Clerk of the Senate shall strike in behalf of the party absent or refusing. If any of the parties shall refuse to submit to the authority of such court, or shall not appear to prosecute or defend their claim or cause, the court shall nevertheless proceed to pronounce judgment. The judgment shall be final and conclusive. The proceedings shall be transmitted to the President of the Senate, and shall be lodged among the public records, for the security of the parties concerned. Every commissioner shall, before he sit in judgment, take an oath, to be administered by one of the judges of the supreme or superior

court of the state where the cause shall be tried, ‘well and truly to hear and determine the matter in question, according to the best of his judgment, without favor, affection, or hope of reward.’

“**SECTION 3.** All controversies concerning lands claimed under different grants of two or more states, whose jurisdictions, as they respect such lands, shall have been decided or adjusted subsequently to such grants, or any of them, shall, on application to the Senate, be finally determined, as near as may be, in the same manner as is before prescribed for deciding controversies between different states.”

When these clauses came up before the Convention on August 24, Rutledge thought that the provision, though necessary under the Confederation, was rendered unnecessary by the national judiciary now to be established, and moved to strike it out. Gorham and Williamson doubted this, but the Convention generally agreed, and the two sections were struck out by a vote of eight to two.

The clauses approved were later referred with the changes indicated to the Committee on Style, and it reported them as follows:—

“**ARTICLE III., SECTION 2.** The judicial power shall extend to all cases, both in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states; between a state and citizens of another state; between citizens of different states; between citizens of the same state claiming lands under grants of different states; or between a state, or the citizens thereof, and foreign states, citizens, or subjects.

“In cases affecting ambassadors, other public ministers, and consuls, and those in which a state shall be a party, the Supreme Court shall have original jurisdiction. In all other cases before

mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact,—with such exceptions, and under such regulations, as the Congress shall make."

On September 15, during the comparison by the Convention of the report of the Committee on Style with the articles agreed on, the first clause of the second section was altered by striking out\* the word "both."

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### ARTICLE III., SECTION 2, CLAUSE 3.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Charles Pinckney's speeches† show that his draft provided for trial by jury in all cases, both civil and criminal, and he said that he considered this provision essential in free government. The resolutions of the Convention contained no provision upon the subject; but Rutledge interlined in Randolph's draft, at the end of the treatment of the legislative powers, "That trials for criminal offences be in the State where the offence was committed—by jury." The Committee of Detail reported as follows in the fourth section of Article XI. :—

"The trial of all criminal offences (except in cases of impeachment) shall be in the state where they shall be committed; and shall be by jury."

\* Elliot, i. 314.

† Moore's American Eloquence, i. 369.

When this clause came up in the Convention on August 28, it was amended *nem. con.* to read as follows :—

“The trial of all crimes (except in cases of impeachment) shall be by jury ; and such trial shall be held in the state where the said crimes shall have been committed ; but when not committed within any state, then the trial shall be at such place or places as the legislature may direct.”

And in this form it was referred to the Committee on Style, which reported it back as follows :—

“The trial of all crimes, except in cases of impeachment, shall be by jury ; and such trial shall be held in the state where the said crime shall have been committed ; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.”

On September 12, after the report of the Committee on Style, but just before the Convention began the comparison of the revised draft with the articles it had agreed on, Williamson observed that no provision had yet been made for juries in civil cases (see “Defeated Proposals ; Juries ; Bills of Rights”), and suggested the necessity of it. Gorham replied that the representatives might safely be trusted, and that it was impossible to discriminate equity cases from those in which a jury was proper. Mason admitted this difficulty, but thought some general principle could be laid down. He suggested the need of a bill of rights, and seconded a motion which Gerry then made for a committee to prepare one. Sherman thought the State declarations of rights were not repealed and would be sufficient, but Mason replied that the laws of the United States were to be paramount to State bills of rights. The Con-

vention was evenly divided on the motion for a committee to prepare a bill of rights,\* and the matter was then dropped. But again, on September 15, during the comparison by the Convention of the report of the Committee on Style with the articles agreed on, Charles Pinckney and Gerry moved to annex to the end of this clause the words "and a trial by jury shall be preserved as usual in civil cases :" but Gorham, King, and Charles Cotesworth Pinckney thought such a provision would be very embarrassing, because of the varying rules as to juries in different States. The motion was then disagreed to *nem. con.*

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### ARTICLE III., SECTION 3, CLAUSES 1 AND 2.

Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

These clauses originated in the Committee of Detail, and the resolutions referred to them contained nothing upon the subjects concerned. Randolph inserted in his committee draft a legislative power "to declare it to be treason to levy war against or adhere to the enemies

\* Elliot, v. 538. The Journal (*ibid.*, i. 306) says that this motion was unanimously defeated.

of the United States," and the committee reported the following as Section 2 of Article VII. :—

"Treason against the United States shall consist only in levying war against the United States, or any of them; and in adhering to the enemies of the United States, or any of them. The legislature of the United States shall have power to declare the punishment of treason. No person shall be convicted of treason, unless on the testimony of two witnesses. No attainer of treason shall work corruption of blood, nor forfeiture, except during the life of the person attainted."

When this clause came up before the Convention on August 20, it was the occasion of considerable discussion and of much difference of opinion. Indeed, the Convention changed it back and forth quite a little, striking out words and then reinserting them, and so on. The difficulty that, in a contest between a State and the United States, the people of a State must be traitors to one or the other party to the controversy was seen by Gouverneur Morris. The clause was at one time made to cover treason generally, the words "against the United States" being cancelled; but some members wanted to leave it so that the States might define treason against themselves, and it was consequently altered with this view. Gouverneur Morris moved to substitute the words of the British statute upon the subject, but his motion was lost. Dickinson had the clause amended so as to require that the two witnesses should be to the same overt act, and Mason had the words "giving them aid and comfort" inserted as restrictive of "adhering to their enemies." Finally, the provision was left as follows:—

"Treason against the United States shall consist only in levying war against them, or in adhering to their enemies,

giving them aid and comfort. The legislature of the United States shall have power to declare the punishment of treason. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act or on confession in open court. No attainer of treason shall work corruption of blood, nor forfeiture, except during the life of the person attainted."

The Committee on Style reported as follows:—

"SECTION 3. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.

"The Congress shall have power to declare the punishment of treason; but no attainer of treason shall work corruption of blood, nor forfeiture, except during the life of the person attainted."

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#### ARTICLE IV., SECTION 1.

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

This clause originated in the Committee of Detail. It is not to be found in Randolph's draft, but was reported by the committee as follows as Article XVI.:—

"Full faith shall be given in each state to the acts of the legislatures, and to the records and judicial proceedings of the courts and magistrates of every other state."

When this provision came up in the Convention on August 29, Williamson moved to substitute for it the words in the Articles of Confederation, "full faith shall

be given, in each of these states, to the records, acts, and judicial proceedings, of the courts and magistrates of every other state." He did not understand precisely the meaning of the article. Wilson and Johnson supposed the meaning to be that judgments in one State should be the ground of actions in other States, and that acts of the legislature should be included, for the sake of acts of insolvency, etc. Madison wanted to provide for the *execution* of judgments in other States under such regulations as might be expedient; he thought this might be safely done, and was justified by the nature of the Union; but Randolph said there was no instance of one nation executing the judgments of another nation, and proposed the following substitute:—

"Whenever the act of any state, whether legislative, executive, or judiciary, shall be attested and exemplified under the seal thereof, such attestation and exemplification shall be deemed in other states as full proof of the existence of that act; and its operation shall be binding in every other state, in all cases to which it may relate, and which are within the cognizance and jurisdiction of the state wherein the said act was done."

Gouverneur Morris moved the following:—

"Full faith ought to be given, in each state, to the public acts, records, and judicial proceedings of every other state; and the legislature shall, by general laws, determine the proof and effect of such acts, records, and proceedings."

The article proposed by the Committee of Detail and Randolph's and Gouverneur Morris's proposals were committed, and Rutledge, Randolph, Gorham, Wilson, and Johnson were appointed the committee. They reported on September 1 as follows:—

"Full faith and credit ought to be given in each state to the public acts, records, and judicial proceedings, of every other state; and the legislature shall, by general laws, prescribe the manner in which such acts, records, and proceedings, shall be proved, and the effect which judgments obtained in one state shall have in another."

When this subject was taken up on September 3, Gouverneur Morris moved to insert "thereof" in place of "which judgments obtained in one State shall have in another;" but Mason and Randolph did not want to extend the legislature's power further than to declare the effect of judgments. Wilson remarked that if the legislature were not allowed to declare the effect, the provision would amount to nothing more than takes place among all independent nations. Morris's motion was agreed to by six States to three, and then, on motion of Madison, the article was amended so as to read that full faith, etc., *shall* be given, and that the legislature *may* by general laws prescribe, etc., and the article as amended was agreed to without a count of States. It was now as follows:—

"Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings, in every other State; and the legislature may, by general laws, prescribe the manner in which such acts, records, and proceedings, shall be proved, and the effect thereof."

The Committee on Style reported it as follows:—

"Full faith and credit shall be given, in each state, to the public acts, records, and judicial proceedings, of every other state. And the Congress may, by general laws, prescribe the manner in which such acts, records, and proceedings, shall be proved, and the effect thereof."

**ARTICLE IV., SECTION 2, CLAUSE 1.**

The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

This clause originated in the Committee of Detail. It is not to be found in Randolph's draft, but the draft made by Wilson for later use in that committee contains a provision inserted on the margin by Rutledge:—

“The free citizens of each State shall be entitled to all privileges and immunities of free citizens in the several States.”

The committee reported the same provision as follows:—

“ARTICLE XIV. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.”

When this clause came up in the Convention on August 28, Charles Cotesworth Pinckney was not satisfied with it. He seemed, says Madison's “Debates,” to want some provision to be included in favor of property in slaves. The discussion of the fifteenth article of the draft (see Article IV., Section 2, Clause 2) which followed directly upon this debate indicates that he had in mind some fear as to its effect upon the status of escaped slaves. The clause was, however, soon agreed to, with South Carolina only in the negative, and was so referred to the Committee on Style, which reported it in precisely the same language.

## ARTICLE IV., SECTION 2, CLAUSE 2.

A person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up to be removed to the State having Jurisdiction of the Crime.

This clause originated mainly in the Committee of Detail, but it is to be observed that the ninth resolution of the New Jersey plan contained a provision which I can only interpret as intended to regulate the same subject in a different way: it provided as follows:—

“That a citizen of one state, committing an offence in another state of the Union, shall be deemed guilty of the same offence as if it had been committed by a citizen of the state in which the offence was committed.”

This resolution, however, failed to receive the approval of the Convention, nor was any other provision upon the subject in question referred to the Committee of Detail. Randolph’s draft also does not contain anything upon the subject, but the draft made later by Wilson for use in that committee contains a marginal insertion as follows in Rutledge’s handwriting:—

“Any person charged with treason, felony, or high misdemeanor, who shall flee from justice and be found in any of the United States, shall, on demand of the Executive Power of the State from which he fled, be delivered up and removed to the State having jurisdiction of the offence.”

The committee reported the following:—

“ARTICLE XV. Any person charged with treason, felony, or high misdemeanor in any state, who shall flee from justice, and

shall be found in any other state, shall, on demand of the executive power of the state from which he fled, be delivered up and removed to the state having jurisdiction of the offence."

When this clause came up in the Convention on August 28, the words "other crime" were inserted in place of "high misdemeanor," because of doubt whether the latter term had not a technical meaning too limited, and the clause as thus amended was soon agreed to. Butler and Charles Pinckney moved an amendment to require "fugitive slaves and servants to be delivered up like criminals:" but Wilson objected that this would oblige the executive to do it at the public expense, and Sherman saw no more propriety in the public seizing and surrendering a slave or servant than a horse. Butler then withdrew his proposition, in order that some particular provision might be made apart from this article (see Article IV., Section 2, Clause 3). The Committee on Style reported the clause as follows:—

"A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, and removed to the state having jurisdiction of the crime."

On September 15, during the comparison by the Convention of the report of the Committee on Style with the articles agreed on, the words "to be removed" were substituted \* for "and removed."

\* Elliot, i. 315.

## ARTICLE IV., SECTION 2, CLAUSE 3.

No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

It has been seen that during the discussion of the clause entitling the citizens of each State to the privileges of the citizens in the several States (Article IV., Section 2, Clause 1), Charles Cotesworth Pinckney had been dissatisfied with it, and had seemed to want some provision included in favor of property in slaves; and further that during the discussion of the article providing for the surrender of fugitives from justice (Article IV., Section 2, Clause 2) on the same day, Butler and Charles Pinckney had moved to require "fugitive slaves and servants to be delivered up like criminals." Wilson objected that this would require the executive to do it at the public expense, and Sherman saw no more propriety in surrendering a slave or servant than a horse. Butler then withdrew his proposition in order that some particular provision might be made, apart from the article then under consideration.

On August 29, evidently in pursuance of the same idea, Butler moved to insert the following after Article XV.; and this was probably a part of the compromise on the subjects of navigation and the importation of slaves which was made between some eastern and southern members on this same day (see Article I., Section 9, Clauses 1, 4, and 5):—

"If any person bound to service or labor in any of the United States shall escape into another state, he or she shall not be dis-

charged from such service or labor, in consequence of any regulations subsisting in the state to which they escape, but shall be delivered up to the person justly claiming their service or labor."

This was at once agreed to *nem. con.*, and the provision was later referred in the same form to the Committee on Style, which reported it back as follows:—

"No person legally held to service or labor in one state, escaping into another, shall, in consequence of regulations subsisting therein, be discharged from such service or labor, but shall be delivered up, on claim of the party to whom such service or labor may be due."

On September 15, during the comparison by the Convention of the report of the Committee on Style with the articles agreed on, the term "legally" was struck out, and the words "under the laws thereof" were inserted\* after the word "state," in compliance with the wish of some who thought the term "legally" equivocal, and favoring the idea that slavery was legal in a moral point of view; and on the same day the words "of any law or regulation" were substituted† for "of regulations subsisting."

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#### ARTICLE IV., SECTION 3, CLAUSE 1.

New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

\* Elliot, v. 550.

† Ibid., i. 315.

The tenth of the Virginia resolutions read as follows :—

“ Resolved, that provision ought to be made for the admission of states lawfully arising within the limits of the United States, whether from a voluntary junction of government and territory, or otherwise, with the consent of a number of voices in the national legislature less than the whole.”

This was agreed to without debate in committee of the whole on June 5, came up before the House itself on July 18, and was passed unanimously, and then went as the seventeenth resolution to the Committee of Detail.

Randolph inserted the following in his draft among the Miscellaneous Provisions :—

“ 1. New states soliciting admission into the Union

- (1) must be within the present limits of the United States:
- (2) must lawfully arise ; that is
  - (a) in the territory of the united states, with the assent of the legislature :
  - (b) within the limits of a particular state, by the consent of a major part of the people of that state :
- (3) shall be admitted only on the suffrage of 2-3ds in the house of representatives and the like No. in the Senate.
- (4) & shall be admitted on the same terms with the original states :
- (5) provided always, that the legislature may use their discretion in admitting or rejecting, and may make any condition concerning the debt of the union at that Time.
- (6) provided also, that the Western states are intitled to admission on the terms specified in the act of congress of .”

This seems to be the form in which Randolph at some time proposed the provision, but he has appar-

ently himself cancelled the proviso as to the Western States, and also the requirement that the states soliciting admission "must be within the present limits of the United States." Possibly he wrote the requirements contained in *a* and *b* after cancelling this, and thought they covered the same ground. These latter were, however, also later cancelled, and Rutledge wrote on the margin, "States lawfully arising, and if within the limits of any of the present States by consent of the legislature of those States." The Committee of Detail reported the following as Article XVII. :—

"New states lawfully constituted or established within the limits of the United States may be admitted, by the legislature, into this government; but to such admission the consent of two thirds of the members present in each House shall be necessary. If a new state shall arise within the limits of any of the present states, the consent of the legislatures of such states shall be also necessary to its admission. If the admission be consented to, the new states shall be admitted on the same terms with the original states. But the legislature may make conditions with the new states concerning the public debt which shall be then subsisting."

When this clause came up in the Convention on August 29 and 30, it was much considered, and a large number of amendments proposed, many of which seem to vary from each other but very little. Gouverneur Morris moved to strike out the last two sentences requiring admission on the same terms as the original States except as to the public debt: he said he did not want to bind down the legislature to admit the Western States on equal terms. Langdon agreed with him. Mason said that, if it were possible to prevent emigration to the west, it might be good policy: "but go the people will, as they find it to their interest, and the best policy is

to treat them with that equality which will make them friends, not enemies." Madison insisted that the Western States neither would nor ought to submit to a union which degraded them from an equal rank with the other States. Sherman and Williamson opposed the motion, but it was carried by the votes of nine States, with only Maryland and Virginia voting no. This same jealousy of the Western States came to the surface on several occasions in the Convention, as, for instance, during the debates upon the subject of representation.\*

The first parts of the article also gave the Convention a good deal of trouble. Gouverneur Morris moved the following as a substitute:—

"New states may be admitted by the legislature into the Union; but no new states shall be erected within the limits of any of the present states, without the consent of the legislature of such state, as well as of the general legislature."

Luther Martin and others objected to requiring the consent of the larger States claiming the western lands to the establishment of new States within their limits. It was unreasonable, he argued, to require the smaller States to aid in guaranteeing that the people of Virginia beyond the mountains, the western people of North Carolina and Georgia, and the people of Maine, should remain subject to the respective States now governing them until these should agree to a separation. Dickinson and others were also of this same general opinion. It was next suggested that difficulties would arise as to the case of Vermont if Gouverneur Morris's substitute should be adopted. Carroll

\* See Article I., Section 2, Clause 3.

urged the importance of a provision that nothing in the Constitution should impair the rights of the United States to lands ceded by Great Britain in the treaty of peace, and stated that the sentiments of Maryland were so strong on the subject of the crown lands that we should again be at sea unless some guard was provided for the rights of the United States to the back lands. His motion for a committee was lost, but he later moved a provision saving the rights of the United States to lands ceded, and it was carried (Article IV., Section 3, Clause 2).

Gouverneur Morris's motion was then agreed to, after being amended as follows to provide for the case of Vermont:—the words “hereafter formed or” were inserted after “shall be,” Vermont having already been formed into a State, and “limits” was changed to “jurisdiction,” the jurisdiction of New York not extending to Vermont, though Vermont was within the limits claimed for New York. As thus amended, Gouverneur Morris's amendment was adopted by the Convention as follows:—

“New states may be admitted by the legislature into the Union; but no new states shall be hereafter formed or erected within the jurisdiction of any of the present states, without the consent of the legislature of such state as well as of the general legislature.”

And then it was amended on motion of Dickinson by the addition of the following clause:—

“Nor shall any state be formed by the junction of two or more states, or parts thereof, without the consent of the legislature of such states, as well as of the legislature of the United States.”

The Committee on Style reported it as follows:—

"SECTION 3. New states may be admitted by the Congress into this Union ; but no new state shall be formed or erected within the jurisdiction of any other state ; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned, as well as of the Congress."

On September 15, during the comparison by the Convention of the report of the Committee on Style with the articles agreed on, Gerry moved to insert after "or parts of states" the words "or a state and part of a state;" but the proposal was disagreed to by a large majority, it being supposed that the case was comprehended in the words of the clause as reported.

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#### ARTICLE IV., SECTION 3, CLAUSE 2.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States ; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

This clause arose late in the proceedings of the Convention. On August 18 Madison introduced and had referred to the Committee of Detail a series of powers which he proposed to confer on Congress ; among them was one "to dispose of the unappropriated lands of the United States," and another "to institute temporary governments for new States arising therein." The Committee of Detail reported on these subjects on August 22 through Rutledge, and recommended to insert the following words at the end of the sixteenth

clause of the first\* section of the seventh article, among the powers of Congress:—

“And to provide, as may become necessary from time to time, for the well managing and securing the common property and general interests and welfare of the United States in such manner as shall not interfere with the government of individual states, in matters which respect only their internal police, or for which their individual authority may be competent.”

This proposal does not seem to have been taken up at any time by the Convention, but some of it found its way into the Constitution in the following manner, while it was also enlarged to cover other points. On August 30, during the discussion of the provision for the admission of new States (Article IV., Section 3, Clause 1), Carroll moved a proviso thereto to declare that nothing in the Constitution should affect the right of the United States to the back lands. He explained that the popular sentiment in Maryland was very strong on this subject, and intimated that the Constitution would hardly be agreed to in that State otherwise. His motion to refer this proposal to a committee was defeated, but he later moved a proviso as follows:—

“*Provided*, nevertheless, that nothing in this Constitution shall be construed to affect the claim of the United States to vacant lands ceded to them by the treaty of peace.”

He explained that, though this might be understood as relating to lands not claimed by any particular States, he had some such in view. Wilson was against it as unnecessary. Madison thought the claims of the United States might in fact be favored by their courts

\* Elliot, v. 462, where it reads “second,” but must mean first.

having jurisdiction, but was inclined to think it best to say nothing upon the subject ; in any event, it ought to go further and declare that the claims of particular States also should not be affected. Carroll then withdrew his motion, and offered the following instead :—

“ Nothing in this Constitution shall be construed to alter the claims of the United States, or of the individual states, to the western territory ; but all such claims shall be examined into, and decided upon, by the Supreme Court of the United States.”

But the following substitute was offered by Gouverneur Morris and was adopted by the Convention :—

“ The legislature shall have power to dispose of, and make all needful rules and regulations respecting, the territory or other property belonging to the United States ; and nothing in this Constitution contained shall be so construed as to prejudice any claims, either of the United States or of any particular state.”

Luther Martin moved an amendment, “ but all such claims may be examined into, and decided upon, by the Supreme Court of the United States,” but it was lost.

The first portion of the motion of Gouverneur Morris was evidently adapted from the proposals which Madison made on August 18. The matter was later referred to the Committee on Style, and they reported it back in the following form :—

“ The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States ; and nothing in this Constitution shall be so construed as to prejudice any claim of the United States, or of any particular state.”

## ARTICLE IV., SECTION 4.

The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion ; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

The eleventh resolution of the Virginia plan was as follows :—

“ Resolved, that a republican government, and the territory of each state, except in the instance of a voluntary junction of government and territory, ought to be guaranteed by the United States to each state.”

This was taken into consideration in committee of the whole on June 11, and some objections made to its form ; whereupon it was changed to read as follows, and was then passed unanimously :—

“ *Resolved*, that a republican constitution, and its existing laws, ought to be guarantied to each state, by the United States.”

In the House revision this resolution was reached on July 18, and objections were made to its form. Gouverneur Morris was opposed to guaranteeing some of the laws of Rhode Island, and Houston thought it very undesirable to perpetuate some of the existing constitutions. Wilson said the purpose was to secure the states against insurrections, and some motions were made to change its language to meet this view, and then an amendment of Wilson’s was approved *nem. con.* to make the clause read “ that a republican form of government shall be guarantied to each state ; and that each state shall be protected against foreign and

domestic violence," and in this form it was referred to the Committee of Detail.

Randolph transferred this language almost literally into his draft, among the miscellaneous provisions; but he added "But this guarantee shall not operate in the last case [domestic violence] without an application from the legislature of a State." The Committee of Detail reported the following as Article XVIII. :—

"The United States shall guaranty to each state a republican form of government; and shall protect each state against foreign invasions, and, on the application of its legislature, against domestic violence."

When this portion of the draft came up in the Convention on August 30, the word "foreign" was struck out as superfluous. Dickinson wanted to amend so as to require the United States in all cases to suppress domestic violence without the application of the legislature, and explained that he thought this of essential importance to the tranquillity of the United States, but his motion was lost. Upon his suggestion the words "or executive" were inserted after "application of its legislature." Luther Martin moved to add to this the words "in the recess of the legislature," but the motion was lost. The clause as amended as follows was then agreed to:—

"The United States shall guaranty to each state a republican form of government; and shall protect each state against invasions; and, on the application of its legislature or executive, against domestic violence."

In this form the provision was referred to the Committee on Style, but some other discussions of the Convention have a bearing on the final form of the clause.

The draft reported on August 6 contained in the first section of the seventh article, among the powers of Congress, a power "to subdue a rebellion in any state, on the application of its legislature," which was presumably intended merely to confer distinct authority to carry out the guaranty provided for in the portion of the Constitution just considered. When this clause came up before the Convention on August 17, Charles Pinckney moved to strike out the words as to the application of the legislature. Luther Martin and Mercer opposed the motion, and Ellsworth moved to add "or executive" after "legislature." Gouverneur Morris remarked that the executive might be at the head of the rebellion, and added, "We are acting a very strange part. We first form a strong man to protect us, and at the same time wish to tie his hands behind him." Gerry was against "letting loose the myrmidons of the United States on a State without its consent." Ellsworth now varied his motion so as to add to the clause as proposed by the Committee of Detail the words "or without it, when the legislature cannot meet;" and this was agreed to. Then, on motion of Madison, the words "against the government thereof" were inserted after "State," so as to leave open the case of a rebellion against the United States and make the provision in hand apply only to a rebellion against a State. But then the Convention, by an evenly divided vote, declined to agree to the clause as amended. The clause so disagreed to was in the following words:—"to subdue a rebellion in any state against the government thereof, on the application of its legislature, or without it when the legislature cannot meet."

Therefore, the only clause upon the subject here

concerned which went to the Committee on Style is that shown before which grew out of the discussion of the eleventh resolution of the Virginia plan. The committee reported it back as follows:—

“The United States shall guaranty to every state in this Union a republican form of government, and shall protect each of them against invasion, and, on application of the legislature or executive, against domestic violence.”

On September 15, during the comparison by the Convention of the report of the Committee on Style with the articles agreed on, the words “when the legislature cannot be convened” were inserted after “executive.”

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## ARTICLE V.

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

Charles Pinckney’s speeches \* show that his draft contained two provisions authorizing some of the fed-

\* Moore’s American Eloquence, i. 368–69.

eral authorities to suggest amendments which should become valid as parts of the Constitution upon ratification by a certain proportion of the legislatures; but further details are not given. On the same subject the thirteenth resolution of the Virginia plan provided as follows:—

“Resolved, that provision ought to be made for the amendment of the Articles of Union whensoever it shall seem necessary; and that the assent of the national legislature ought not to be required thereto.”

This clause was postponed on June 5, and was taken up again on June 11, when several members did not see the necessity of it at all, nor the propriety of making the consent of the national legislature unnecessary. Mason and Randolph urged the necessity of a provision for amendment, saying that the plan to be formed was sure to be defective, as the Confederation has been found to be, and it was much better to provide for amending in a constitutional way than to trust to chance and violence. The first part of the resolution was agreed to, and that as to the assent of the national legislature postponed. In the revision by the House proper on July 23, the clause was approved in the same form as reported by the committee of the whole in the following language:—

“*Resolved*, That provision ought to be made for the amendment of the Articles of Union, whensoever it shall seem necessary,”

and in this form it was referred to the Committee of Detail.

In carrying this out Randolph wrote in his draft “an alteration may be effected in the articles of union on the application of two-thirds of the State legisla-

tures," and after these words Rutledge appears to have added, "by a convention." But the whole provision is then cancelled, and Rutledge has interlined, "on application of 2-3ds of the State Legislatures to the National Legislature they [shall?] call a convention to revise and alter the articles of union." The committee reported the following as Article XIX. :—

"On the application of the legislatures of two-thirds of the states in the Union, for an amendment of this Constitution, the legislature of the United States shall call a convention for that purpose."

When this came up in the Convention on August 30, Gouverneur Morris suggested that the legislature should be left at liberty to call a convention whenever they pleased, but he made no motion, and the clause was then agreed to as reported *nem. con.*

On September 10, after the appointment of the Committee on Style, Gerry moved to reconsider the above. The Constitution, he said, is meant to be paramount to those of the States ; and hence, under this clause, two-thirds of the States may call a convention, and a majority vote in it can bind the Union to innovations that may altogether subvert the State constitutions. Hamilton seconded the motion, but from a different view from that of Gerry ; he did not object to the consequences stated by him. There was, he said, no greater evil in subjecting the people of the United States to the major voice than the people of a particular State. Amendments ought to be more easily made, and the national legislature will be the first to perceive the need of amendments, and ought to be empowered to call a convention whenever two-thirds of each branch should concur. Madison remarked on the vagueness

of the term “call a convention for the purpose,” without fixing how it should be called, or what force its acts should have.

The Convention having voted to reconsider, Sherman moved to add to the provision the words “or the legislature may propose amendments to the several States for their approbation ; but no amendments shall be binding until consented to by the several States.” Wilson moved to insert “two-thirds of” before “the several States;” and on the defeat of this, “three-fourths of,” and this was agreed to *nem. con.* Madison moved to postpone the existing clause and take up the following :—

“The legislature of the United States, whenever two-thirds of both Houses shall deem necessary, or on the application of two-thirds of the legislatures of the several states, shall propose amendments to this Constitution, which shall be valid, to all intents and purposes, as part thereof, when the same shall have been ratified by three-fourths, at least, of the legislatures of the several states, or by conventions in three-fourths thereof, as one or the other mode of ratification may be proposed by the legislature of the United States.”

Hamilton seconded this motion, but Rutledge said he could never agree to give a power by which the articles relating to slaves might be altered by the States not interested in that property ; he accordingly moved to add to the above :—

“*Provided*, That no amendments, which may be made prior to the year 1808, shall in any manner affect the fourth and fifth sections of the seventh article ;”

and then the whole clause, as recast by Madison and amended by Rutledge, was agreed to by nine States to one.

The Committee on Style reported the clause as follows :—

"ARTICLE V. The Congress, whenever two thirds of both houses shall deem necessary, or on the application of two thirds of the legislatures of the several states, shall propose amendments to this Constitution, which shall be valid, to all intents and purposes, as part thereof, when the same shall have been ratified by three fourths, at least, of the legislatures of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided, that no amendment which may be made prior to the year 1808 shall in any manner affect the and sections of article ."

On September 15, during the comparison by the Convention of the report of the Committee on Style with the articles agreed on, this provision was the subject of a good deal of discussion. Mason thought the whole plan of amendment objectionable: as both modes depend upon Congress, no proper amendment will ever be obtained, if the government should become oppressive. Gouverneur Morris and Gerry then moved to require a convention to be called on the application of two-thirds of the States, and this was agreed to *nem. con.* Other minor motions as to the method of amendment were made, but were defeated by large majorities.

Sherman expressed his fears that amendments might be made fatal to particular States, such as abolishing them altogether or depriving them of their equality in the Senate. He thought the proviso in favor of States importing slaves should be extended so as to provide that no State should be affected in its internal police or deprived of its equality in the Senate, and he moved a proviso to that effect. Madison thought that, if they should once begin with these special provisos, every

State would insist upon them for their boundaries, exports, etc. Sherman's motion was lost by three ayes to eight noes, whereupon he moved to strike out the fifth article altogether. This was lost by two ayes to eight noes; but murmurs began to circulate among the small States, and Gouverneur Morris then moved to annex a further proviso to the article in these words:—“that no State, without its consent, shall be deprived of its equal suffrage in the Senate;” and this was agreed to without debate, no one opposing it or saying no upon the question. The blanks in the article as reported were then filled up, and the whole approved in its final form.

Mason expressed his discontent at the power conferred upon Congress to pass navigation laws, and moved still another proviso to the amendment clause, intended to lessen this power, but it was defeated (see Article I., Section 9, Clauses 1, 4, and 5).

Randolph stated, on September 15, that it was with pain he was led to disagree from the Convention, but that he could not sign the instrument as it stood: he then moved that “amendments to the plan might be offered by the State Conventions, which should be submitted to, and finally decided on by, another General Convention,” and said that, if this were approved, he might possibly sign. Mason and Gerry agreed with him in the main, and explained some of the grounds of their objection. Charles Pinckney referred to the solemnity of the moment and to the confusion of plans which was certain to result from such an experiment, and added that he was himself strongly opposed to some parts of the Constitution, but meant to give it his support. All the States voted against Randolph's proposal.

## ARTICLE VI., CLAUSE 1.

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

The twelfth resolution of the Virginia plan provided as follows :—

“ Resolved, that provision ought to be made for the continuance of Congress, and their authorities and privileges, until a given day after the reform of the Articles of Union shall be adopted, and for the completion of all their engagements.”

This resolution was approved on June 5, and came up again during the House revision on July 18, but Gouverneur Morris thought the assumption of their agreements might as well be omitted, and he did not approve of continuing Congress until all the States approve, as it might become expedient to put the proposed plan in operation among a smaller number. The subject was not much discussed, and the whole resolution was disapproved ; but at a later stage of the proceedings a portion of the idea contained found its way into the Constitution in the following manner. On August 18 Rutledge moved that a committee of a member from each State be appointed to consider the necessity and expediency of the debts of the several States being assumed by the United States ; and his motion was carried and a committee appointed. There was a slight discussion of the subject, but it was entirely directed to the main subject of Rutledge’s motion, and with this we are not concerned here (see it considered under “Defeated Proposals: Assumption of State Debts”).

There were also referred to this same committee some other resolutions introduced on August 18 by Charles Pinckney and Gerry and Rutledge, which all aimed at much the same purpose: that of Pinckney read, “to secure all creditors, under the new Constitution, from a violation of the public faith, when pledged by the authority of the legislature.” On August 21 Livingston reported as follows from this committee:—

“The legislature of the United States shall have power to fulfil the engagements which have been entered into by Congress, and to discharge, as well the debts of the United States, as the debts incurred by the several states, during the late war, for the common defence and general welfare.”

This report was taken up on motion on August 22, but only the first sentence—“the legislature of the United States shall have power to fulfil the engagements which have been entered into by Congress”—was apparently considered at all. Ellsworth thought the provision unnecessary, as the obligation was clear even without it, but Randolph, Madison, and Gerry thought otherwise. Madison mentioned the attempt made by debtors to British subjects to show that contracts under the old government were dissolved by the revolution, which destroyed the political identity of the society, and Gerry thought some explicit provision should be made, so that no pretext might remain to get rid of the public engagements. Gouverneur Morris moved to amend so as to read “the legislature shall discharge the debts, and fulfil the engagements, of the United States,” and in this form it was agreed to by all the States.

On the next day (August 23), while the Convention was considering the powers to be conferred upon Con-

gress under what has now become Article I., Section 8, Clause 1, the idea above considered was inserted in this latter portion of the Constitution, and it was, on motion, made to read :—

“The legislature *shall* fulfil the engagements and discharge the debts of the United States; and shall have the power to lay and collect taxes, duties, imposts, and excises.”

Butler immediately gave notice of a motion to reconsider the first portion of this, lest it should compel payment to the “blood-suckers” who speculated, as well as to those who had bled for their country, and this motion was carried the next day, and the subject came up for consideration on August 25. Mason objected to the provision being made imperative, and thought it might be impossible to perform ; he argued that it would beget speculations, and that there was a great difference between original holders and those who had fraudulently purchased in the pestilential practice of stock-jobbing ; he did not mean, he said, to include those who had bought in the open market. He feared, also, that the word *shall* might extend to all the old continental paper. After a short discussion, Randolph proposed to make the provision read :—

“All debts contracted, and engagements entered into, by or under the authority of Congress, shall be as valid against the United States, under this Constitution, as under the Confederation ;”

and this was adopted by a vote of ten to one.

The clause so adopted as a part of the provisions upon the powers of Congress went later to the Committee on Unfinished Portions, because some amendments (immaterial here) were later moved to the clause

of which it then formed a part and were not acted on (see Article I., Section 8, Clause 1), and that committee omitted this provision from the part of the Constitution in question. The Committee on Style, however, evidently considered the idea as belonging in the Constitution, and transferred it to a new clause; they adopted very closely the language into which the matter had been finally cast by Randolph, making, however, some minor alterations, and reported as follows:—

“ARTICLE VI. All debts contracted, and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution as under the Confederation.”

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### ARTICLE VI., CLAUSE 2.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The first outline of the language of this clause is to be found in the sixth resolution of the New Jersey plan, which was introduced into the Convention on June 15; but some earlier discussions must first be considered.

The sixth resolution of the Virginia plan, upon the powers of Congress, contained a provision that

“The national legislature ought to be empowered . . . to negative all laws passed by the several states contravening, in the opinion of the national legislature, the Articles of Union, or any treaty subsisting under the authority of the Union;”

and the eighth resolution made the executive and a convenient number of the national judiciary a council of revision, and provided that their dissent from a negative of a State law should amount to a rejection of such negative unless the law in question should "be again negatived by \_\_\_\_\_ of the members of each branch." Charles Pinckney's speeches \* show that his draft also gave Congress a negative on all such legislative acts of each State as should appear to them improper, and he referred, moreover, in his speeches to the violations by the States of federal laws and of nearly every treaty.

The two plans introduced at the very opening of the Convention thus each contained a method for the setting aside of objectionable State laws by the central government, and I think that a close following of the treatment by the Convention of this part of the Virginia plan will demonstrate that the clause we are now concerned with, coupled with the clause as to the judicial power of the federal government (Article III., Section 2, Clause 1), was distinctly intended to substitute another method of attaining the same end. The portion quoted from the sixth resolution of the Virginia plan was agreed to without debate or dissent in committee of the whole on May 31. On June 8, Charles Pinckney and Madison moved to change the language so as to read "to negative all laws which to them shall appear improper," but the motion was lost after some memorable debate on the control of the States and their tendency to encroach on the federal government.

The resolution was therefore reported from the com-

\* Moore's American Eloquence, i. 365-66.

mittee of the whole in the language that “the national legislature ought to be empowered . . . to negative all laws passed by the several states, contravening, in the opinion of the national legislature, the articles of the Union, or any treaty subsisting under the authority of the Union ;” but when this came up for consideration before the Convention proper on July 17 it was discussed for a short time, and was then defeated. Gouverneur Morris was against it, because it would disgust the States, and Sherman and he thought it unnecessary, as the courts of the States would not consider as valid any law contravening the authority of the Union, and which the legislature would wish to be negatived. Luther Martin considered the clause improper and inadmissible, and asked whether all the laws of the States were to be sent up to the general legislature before they were permitted to operate. Madison and Charles Pinckney both thought the provision essential, and Madison argued that nothing less than such a negative could control the propensity of the States to disturb the system. They will, he said, pass laws which will accomplish their purpose before they can be set aside by the national tribunals ; nor can confidence be put in those of the States. In all the States they are more or less dependent on the legislatures, and in Rhode Island judges were displaced who refused to execute an unconstitutional law.

Upon taking a vote, the clause was defeated by seven to three, and Luther Martin then immediately moved the following resolution, which was agreed to *nem. con.* Its language is very closely the same as that of the sixth resolution of the New Jersey plan, which had been introduced into the Convention on June 15, and

which Martin had aided \* to draw ; and it seems clear enough that it was intended as a substitute for, and to attain the same end as, the clause which had just been defeated :—

“That the legislative acts of the United States, made by virtue and in pursuance of the Articles of Union, and all treaties made and ratified under the authority of the United States, shall be the supreme law of the respective states, as far as those acts or treaties shall relate to the said states, or their citizens and inhabitants ; and that the judiciaries of the several states shall be bound thereby in their decisions, anything in the respective laws of the individual states to the contrary notwithstanding. †

This proposition was, as has been said, agreed to at once, and was referred later to the Committee of Detail as the seventh resolution of the Convention, and in that committee a proposal was made by Randolph which is very interesting, and indicates strongly a clear intention to attain through the judiciary the end of setting aside State laws, a power which it has just been seen the Convention had declined to vest in the legislative department. It must never be forgotten in this connection that a point which was constantly in the minds of members as something absolutely necessary was to stop the continual violations ‡ of contractual rights and of the rights of foreigners under treaties, by the laws of the States. Before the Convention met, Randolph and Madison were evidently considering some method of securing in particular the rights of the British creditors under the treaty of

\* Luther Martin’s Letter, printed in Elliot’s Debates, i. 349 ; see also Madison on the same subject, Ibid., v. 191.

† Elliot, i. 207 ; v. 322.

‡ See references given under Article I., Section 10, Clause 1.

peace, and the former wrote\* the latter on April 4, 1787, "But does the establishment of the treaty as a law provide certainly for the recovery of the debts? Ought it not [to] be paramount to law, or at least to be one of those laws which are, in my opinion, beyond repeal, from being combined with a compact?" And it will be observed that the proposition of Luther Martin, as well as the like proposition contained in the New Jersey resolutions, made treaties a part of the supreme law.

When, with all these matters in his mind, and with the resolution adopted by the Convention on Luther Martin's motion before him, Randolph came to sketch his committee draft, he wrote at one time a provision which proves beyond doubt that he at least foresaw the outlines of that function of the courts as to unconstitutional laws, which is now so clearly established; he proposed to insert the following clause at the end of the provisions as to the legislative powers of Congress:—

"All laws of a particular State repugnant hereto shall be void; and in the decision thereon, which shall be vested in the supreme judiciary, all incidents, without which the general principle cannot be satisfied, shall be considered as involved in the general principle."

This clause is cancelled in the draft, and was therefore doubtless disapproved by the committee or by its author's own later judgment, and over it Randolph has written "insert the eleventh article." This was the article upon the Judiciary, in the draft reported by the committee, and the words so inserted probably indicate that he thought the same result as was originally

\* Conway's Randolph, 72.

intended by the cancelled clause would flow from the provisions as to the jurisdiction of the supreme court. (See Article III., Section 2, Clauses 1 and 2.)

The Committee of Detail reported the provision introduced by Luther Martin in the following form :—

“ARTICLE VIII. The acts of the legislature of the United States made in pursuance of this Constitution, and all treaties made under the authority of the United States, shall be the supreme law of the several states, and of their citizens and inhabitants; and the judges in the several states shall be bound thereby in their decisions, any thing in the constitutions or laws of the several states to the contrary notwithstanding.”

When this clause came up before the Convention on August 23, Rutledge moved to amend it to read as below, and this was agreed to *nem. con.* The principal change consisted in extending the provision so as to include the Constitution. This had not yet been done in the judiciary clause (Article III., Section 2, Clause 1), but was done later :—

“This Constitution, and the laws of the United States made in pursuance thereof, and all the treaties made under the authority of the United States, shall be the supreme law of the several states, and of their citizens and inhabitants; and the judges of the several states shall be bound thereby in their decisions, any thing in the constitutions or laws of the several states to the contrary notwithstanding.”

Later the same day, Charles Pinckney introduced once more the plan of giving to Congress the power to negative State laws, but varied it with a proviso that two-thirds of the members of each House should concur. There was some discussion of the matter, but its supporters were unable to carry a motion to commit the proposal, and then the motion was withdrawn.

On August 25, the above clause was amended *nem. con.* on motion of Madison, seconded by Gouverneur Morris, by inserting after "all treaties made," the words "or which shall be made;" the purpose being to obviate all doubt about pre-existing treaties by making the language expressly cover both past and future ones. The clause was later referred, without further change, to the Committee on Style, and they reported it back with some changes of importance, the principal one being the substitution of the term "supreme law of *the land*" for "supreme law of the respective states," etc. :—

"This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the Constitution or laws of any state to the contrary notwithstanding."

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## ARTICLE VI., CLAUSE 3.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

The fourteenth resolution of the Virginia plan was as follows:—

"Resolved, that the legislative, executive, and judiciary powers, within the several states, ought to be bound by oath to support the Articles of Union."

This clause was postponed on June 5, and on June 11 Sherman opposed it as intruding needlessly into the State jurisdictions. Gerry thought there was as much reason for an oath to the States from the national officers, while Randolph thought it vital to put the national government at least on the same basis as the States, the officers of which already take an oath to the government they serve. Luther Martin said the new oath was either coincident with that to the States or was contrary and therefore improper, and he moved to strike out the words "within the several States," but his motion was lost, and then the resolution was carried by six ayes to five noes.

The clause was reached again during the revision by the House on July 23, and Williamson suggested that a reciprocal oath should be required from the national officers to support the State governments, but his opposition does not seem to have had any support. Wilson rather doubted the expediency and efficacy of oaths. The resolution was amended to include the national officers, and was then passed *nem. con.* in the following form :—

"*Resolved*, That the legislative, executive, and judiciary powers, within the several states, and of the national government, ought to be bound, by oath, to support the Articles of Union."

And in this form it was referred to the Committee of Detail.

Randolph omitted from his draft that portion of this provision which required an oath from the national officers as well as those of the State, but the committee changed this, and reported as follows :—

"ARTICLE XX. The members of the legislatures, and the executive and judicial officers of the United States, and of the several states, shall be bound by oath to support this Constitution."

When this clause came up in the Convention on August 30, the words "or affirmation" were added after "oath," and then Charles Pinckney moved to add to the article the proviso, "but no religious test shall ever be required as a qualification to any office or public trust under the authority of the United States." A similar provision is shown by his speeches\* to have been contained in his draft, and he had told the Convention that it was "a provision the world will expect from you in the establishment of a system founded on Republican principles and in an age so liberal and enlightened as the present." He had also introduced a provision in the same general direction into the Convention on August 20:—"No religious test, or qualification, shall ever be annexed to any oath of office under the authority of the United States." This motion had been referred to the Committee of Detail, but they do not seem to have made any report upon it. It was doubtless for this reason that Pinckney now moved it in the form of a proviso to the present clause. Sherman thought the proviso unnecessary, as the prevailing liberality was a sufficient protection against such tests, but Gouverneur Morris and Charles Cotesworth Pinckney approved the motion, and it was agreed to, as was then the whole article as amended.

The Committee on Style reported this clause as follows:—

\* Moore's American Eloquence, i. 369.

"The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound, by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office of public trust under the United States."

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## ARTICLE VII.

The ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

The fifteenth resolution of the Virginia plan was in the following language:—

"Resolved, that the amendments which shall be offered to the Confederation by the Convention, ought, at a proper time or times, after the approbation of Congress, to be submitted to an assembly or assemblies of representatives, recommended by the several legislatures, to be expressly chosen by the people, to consider and decide thereon."

This was postponed on June 5, after a short discussion in which Sherman and Gerry objected to popular ratifications, while Madison thought them essential and remarked that otherwise in cases of conflicts between laws of the States and of Congress, the courts of the former might decide in favor of their own laws; and he remarked further that it might be asserted that the Union was a mere treaty among independent States, and therefore a breach of any one article absolved the other parties from the whole obligation. The resolution came up again in committee of the whole on June

12,\* and was agreed to, but it was a good deal discussed when it came before the House proper on July 23. Ellsworth, Paterson, and Gerry thought it ought rather to be referred to the State Legislatures, while Mason, Randolph, Gorham, Gouverneur Morris, and Madison all supported the reference to Conventions. Gouverneur Morris argued that, as no alteration could be made under the Confederation without unanimous consent, any change in the proposed Constitution not made in accordance with this provision, must be held void by the judges as unconstitutional, if the reference should be made to the legislature; while, if the reference is made to the people of the United States, the federal compact may be altered by a majority of them. Madison thought the legislatures clearly incompetent, for the very changes proposed would make essential inroads on the State constitutions, and a legislature cannot change the constitution under which it exists. The difference between a system founded on the legislature only and one founded on the people is, he said, that between a league or treaty and a constitution. And he elaborated the ideas he had thrown out earlier, and went on that a law violating a mere treaty or league created by a prior law might be held valid by the judges, while they would declare void a law violating a constitution adopted by the people. Again, in the case of treaties, a violation of any one article by one party frees the other parties, while in the case of a union of people under one constitution, such an interpretation is excluded. Gouverneur Morris moved to refer the plan to one general convention to consider,

\* Elliot, v. 183. Compare, however, i. 170.

amend, and establish, but his motion was not seconded. A motion by Ellsworth to refer to the legislatures was defeated, and the resolution as reported was then approved by nine to one.

During the discussion on June 5, Wilson—apparently meaning to threaten the smaller States of New Jersey and Delaware—had expressed a hope that the provision for ratifying would be put on such a footing as to admit of a partial union, with a door open for the accession of the rest, and Charles Pinckney hoped that, in case the experiment should not unanimously take place, nine States might be authorized to unite under the same government. Again, on July 23, Gorham threw out pretty distinctly the idea that it might be necessary to “give effect to the system without waiting for the unanimous consent of the States;” and Gouverneur Morris had suggested the same idea less distinctly on July 18.

This resolution was thus referred to the Committee of Detail as the twenty-second resolution of the Convention in the same form in which Randolph had introduced it at the opening of the proceedings, and there can be no doubt that the article of the Constitution with which we are now concerned grew out of it and the ideas thrown out in the debate upon it. Randolph’s draft contains at the end what he calls “addenda,” the purpose of which is to provide for the method of establishing and introducing the government. The first of these was written by him, “The assent of the major part of the people of        states shall give operation to this constitution,” and in this the words “major part of the people” are cancelled, and over them is written, in Rutledge’s handwriting, “Conventions.” The Com-

mittee of Detail reported the following as Article XXI. :—

“The ratification of the conventions of states shall be sufficient for organizing this Constitution.”

When this clause came up in the Convention on August 30 and 31, Gouverneur Morris thought the blank ought to be filled up in a twofold way, so as to provide for the cases of the ratifying States either being contiguous, which would render a small number sufficient, or being dispersed, which would require a greater number. Madison remarked that if the blank was filled up with nine or less, the Constitution might be put in force over the whole body of the people, though less than a majority of them should ratify it; but Wilson thought the States only which ratify can be bound. King moved to add the words “between the said states,” so as to confine the operation of the government to the States ratifying it, and this was agreed to, with Maryland only in the negative. Sherman doubted the propriety of authorizing less than all the States to execute the Constitution, because of the nature of the existing Confederation, and Madison proposed an amendment intended to require the concurrence of a majority of both the States and the people. But these proposals were not pressed to a vote, and Gouverneur Morris moved to strike out the requirement of conventions and leave the States to pursue their own modes. King thought this was equivalent to giving up the business, because of the complicated formations of the legislatures, but Morris explained that he meant to facilitate the adoption of the plan by making it easy for each State to accord with the mode

required by its constitution. Madison, Gorham, and Charles Pinckney were in favor of conventions, Luther Martin for a reference to the State legislatures. Morris's motion was lost, and the Convention then proceeded to fill up the blank for the number of States. Motions for thirteen and for ten were defeated, and nine was fixed upon. Randolph and Mason were the chief supporters of nine, and argued that it was best to preserve ideas already familiar to the people: nine States, they said, were required in all great cases under the Confederation. The article as thus amended was then agreed to by all the States except Maryland, and was as follows:—

“The ratification of the Conventions of nine States shall be sufficient for organizing this Constitution between the said States.”

On September 10, after the appointment of the Committee on Style, Gerry moved to reconsider this and the twenty-second article (see “Reference to Congress”). He was opposed to an “amendment of the Confederation with so little scruple or formality.” Hamilton concurred with Gerry, and wanted each legislature authorized to say whether or not it was in favor of establishing the Constitution among nine States. Gorham replied that if this were done different and conditional ratifications would defeat the instrument entirely. Randolph was opposed to this part of the plan, and thought the Constitution contained so many objectionable features that it ought to go to another Convention clothed with authority to adopt such amendments as it should think desirable. Hamilton moved the following elaborate proposition containing the ideas he had expressed:—

*“Resolved*, That the foregoing plan of a Constitution be transmitted to the United States in Congress assembled, in order that, if the same shall be agreed to by them, it may be communicated to the legislatures of the several states, to the end that they may provide for its final ratification, by referring the same to the consideration of a convention of deputies in each state, to be chosen by the people thereof; and that it be recommended to the said legislatures, in their respective acts for organizing such convention, to declare that, if the said convention shall approve of the said Constitution, such approbation shall be binding and conclusive upon the state; and further, that if the said convention shall be of opinion that the same, upon the assent of any nine states thereto, ought to take effect between the states so assenting, such opinion shall thereupon be also binding upon such a state, and the said Constitution shall take effect between the states assenting thereto.”

Only Connecticut, however, voted in favor of this amendment, and the twenty-first article as reported from the Committee of Detail, with the blank filled and with the addition of the words “between the said States,” was then again agreed to unanimously, and was later referred to the Committee on Style. They reported it back to the Convention as follows:—

“ARTICLE VII. The ratification of the conventions of nine states shall be sufficient for the establishment of this Constitution between the states so ratifying the same.”

On September 15, when the Convention had completed the comparison of the report of the Committee on Style with the articles agreed on, Randolph animadverted on the dangerous powers given to Congress by the Constitution: he felt pain at differing from the Convention at the end of its labors, and was anxious for some accommodating expedient which would relieve him from his embarrassments, and he accord-

ingly moved "that amendments to the plan might be offered by the State Conventions, which should be submitted to, and finally decided on by, another General Convention." It would be impossible for him, he said, to put his name to the instrument if this proposition were disregarded. Whether he should oppose it afterwards he would not then decide; but he would not deprive himself of the freedom to do so. Mason seconded the motion, and spoke of the dangerous power of the government. He thought it would certainly end either in monarchy or a tyrannical aristocracy. The Constitution had been formed without the knowledge of the people, and a second Convention would be more able to provide a system consonant to the sense of the people. As it stood, he could neither give it his vote nor support in Virginia, and he could not sign here what he could not support there. With the expedient of another Convention, he could sign. Charles Pinckney thought these declarations gave a peculiar solemnity to the moment. He descanted on the difficulties consequent upon calling for amendments from the States. He had objections to the plan; but, apprehending the danger of a General Convention and an ultimate decision by the sword, he should give the instrument his support. Gerry stated his objections in some detail, and added that they made it impossible for him to sign the Constitution. He was in favor of a second General Convention.

All the States voted against Randolph's proposition.

## ATTESTATION.

DONE in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven, and of the Independance of the United States of America the Twelfth

IN WITNESS whereof We have hereunto subscribed our Names,

On September 15, after the Convention had completed the comparison of the report of the Committee on Style with the articles agreed on, the Constitution as amended was agreed to by a vote of all the States present, and was ordered to be engrossed, and on September 17 was again agreed to as enrolled by a vote of all the States.

On the 17th, Franklin arose with a written speech, which Wilson then read for him. He urged the members to merge their differences and put their names to the instrument, and he moved that the Constitution be signed by them after a clause in the following form:—

“ Done in Convention by the unanimous consent of *the states* present, the 17th of September, &c. In witness whereof, we have hereunto subscribed our names” etc.

This ambiguous form had been drawn up by Gouverneur Morris, and had been put by him into the hands of Franklin in order that it might have the better chance of success. The argument was that it was merely an attestation of the fact that all the *States present* had consented to the instrument, and did not imply that any member personally approved it. Randolph and Gerry persisted in their declination to sign, while Gouverneur Morris and Franklin still urged those objecting to sign the form proposed. Blount said

he would not pledge himself to support the plan, but would subscribe his name to the clause of attestation suggested. Hamilton expressed his anxiety that every member should do this, and stated that no man's ideas were more remote from the plan than his, yet he would sign because he preferred the chance of good it offered to the anarchy that would otherwise follow. Charles Cotesworth Pinckney thought they were not likely to gain converts by the proposed ambiguous form, and that it would be best to be candid. Franklin's motion was carried by ten States—South Carolina divided.

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### REFERENCE TO CONGRESS.

*Resolved*, That the preceding Constitution be laid before the United States in Congress assembled; and that it is the opinion of this Convention, that it should afterwards be submitted to a convention of delegates chosen in each state by the people thereof, under the recommendation of its legislature, for their assent and ratification; and that each convention, assenting to and ratifying the same, should give notice thereof to the United States in Congress assembled.

The clause here concerned grew out of the same discussions which have been considered under Article VII. It has been seen there that the fifteenth resolution of the Virginia plan proposed :—

“That the amendments which shall be offered to the Confederation by the Convention, ought, at a proper time or times, after the approbation of Congress, to be submitted to an assembly or assemblies of representatives, recommended by the several legislatures, to be expressly chosen by the people, to consider and decide thereon.”

This resolution was agreed to in committee of the whole on June 12, but was a subject of some discussion on July 23 in the Convention proper; it was, however, agreed to on the latter date by the Convention in the same form in which it had been approved by the committee of the whole and had been originally introduced by Randolph. The latter, in his treatment of the subject in his draft, did little but follow strictly the resolution referred; the only new point added seems to have been contained in the three words "in each State," added by Rutledge, after Randolph's specification that the ratification should be by "a special convention." The Committee of Detail reported as follows by Article XXII. :—

"This Constitution shall be laid before the United States in Congress assembled, for their approbation; and it is the opinion of this Convention, that it should be afterwards submitted to a convention chosen in each state, under the recommendation of its legislature, in order to receive the ratification of such convention."

When this clause came up in the Convention on August 31, the words "for their approbation" were struck out on motion of Gouverneur Morris and Charles Pinckney, so as to avoid the requirement of the approval of Congress; and the same members then moved an amendment intended to impress the more strongly the need of calling conventions. Morris feared, he said, that though the people would at first approve the Constitution, those interested in the state governments would intrigue and turn the popular current against it. Luther Martin and Gerry expressed their agreement with him that after awhile the people

would be against it, but for a different reason from that given by him ; they did not believe it would be ratified, unless the people were hurried into it by surprise. Mason said he would rather chop off his hand than agree to the Constitution as it now stands. The motion of Morris and Pinckney was lost, and the clause as amended was then agreed to, with Maryland alone in the negative.

On September 10, the clause was reconsidered on motion of Gerry, and there was some discussion as to the functions of Congress in the matter of adopting the Constitution and as to the difficulty that the new instrument violated the Articles of Confederation. Williamson and Gerry moved to reinstate the words "for the approbation of Congress," but the motion was disagreed to *nem. con.* Fitzsimons explained that these words had been struck out in order to save Congress from the necessity of an act inconsistent with the Articles of Confederation.

On September 10, Randolph went into a detail of his objections to the plan, and wanted it to go with Congress's approbation to the States ; that these should have power to adopt, reject, or amend, and that then the instrument should go to a final Convention, with power to adopt or reject the proposals so offered. Franklin seconded the motion, but it did not reach a vote.

The clause went therefore to the Committee on Style in the same form in which it had been reported by the Committee of Detail, except that the words "for their approbation" were struck out. This committee made a number of minor alterations, transferred part of the twenty-third resolution ("Introduction of Gov-

ernment") to this clause, and then proposed it as follows:—

"*Resolved*, That the preceding Constitution be laid before the United States in Congress assembled ; and that it is the opinion of this Convention, that it should afterwards be submitted to a convention of delegates chosen in each state by the people thereof, under the recommendation of its legislature, for their assent and ratification ; and that each convention assenting to and ratifying the same should give notice thereof to the United States in Congress assembled."\*

In this form it seems † to have been approved without debate immediately after the signing of the Constitution.

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## INTRODUCTION OF GOVERNMENT.

*Resolved*, That it is the opinion of this Convention, that as soon as the conventions of nine states shall have ratified this Constitution, the United States in Congress assembled should fix a day on which electors should be appointed by the states which shall have ratified the same ; and a day on which the electors should assemble to vote for the President ; and the time and place for commencing proceedings under this Constitution : that, after such publication, the electors should be appointed, and the senators and representatives elected ; that the electors should meet on the day fixed for the election of the President, and should transmit their votes, certified, signed, sealed, and directed, as the Constitution requires, to the secretary of the United States in Congress assembled : that the senators and representatives should convene at the time and place assigned ; that the senators should appoint a president for the sole purpose of receiving, opening, and counting the votes for President, and that after he shall be chosen, the Congress, together with the President, should, without delay, proceed to execute this Constitution.

\* Elliot, v. 541.

† Elliot, v. 602, note 266.

This provision originated entirely in the Committee of Detail. Randolph wrote among the *addenda* in his draft the following ideas upon the subject:—

- “2. Each assenting state shall notify its assent to congress, who shall publish a day for its commencement, not exceeding
- “After such publication, or with the assent of the major part of the assenting states after the expiration of days from the giving of the assent of the ninth state,
  - “(1) each legislature shall direct the choice of representatives, according to the seventh article and provide for their support:
  - “(2) each legislature shall also choose senators, and provide for their support.
  - “(3) they shall meet at the Place & on the day assigned by congress,
  - “(4) They shall as soon as may be after meeting elect the executive: and proceed to execute this constitution.”

The Committee of Detail reported the following as Article XXIII.:—

“To introduce this government, it is the opinion of this Convention, that each assenting convention should notify its assent and ratification to the United States in Congress assembled; that Congress, after receiving the assent and ratification of the conventions of        states, should appoint and publish a day, as early as may be, and appoint a place, for commencing proceedings under this Constitution; that, after such publication, the legislatures of the several states should elect members of the Senate and direct the election of members of the House of Representatives; and that the members of the legislature should meet at the time and place assigned by Congress, and should, as soon as may be after their meeting, choose the President of the United States, and proceed to execute this Constitution.”

When this article came up in the Convention, on August 31, the blank for the number of States required

to ratify was filled up with nine, as of course in accordance with the decision under the twenty-first article; and on motion of Gouverneur Morris the words "choose the President of the United States, and" were struck out, as it had not yet been decided how the President should be chosen. As amended, the clause was then agreed to.

The Committee on Style made material alterations in this section to meet the later decisions of the Convention, transferred the first portion of it to the twenty-second article ("Reference to Congress"), and then reported it as follows:—

"*Resolved*, That it is the opinion of this Convention, that, as soon as the conventions of nine states shall have ratified this Constitution, the United States in Congress assembled should fix a day on which electors should be appointed by the states which shall have ratified the same; and a day on which the electors should assemble to vote for the President, and the time and place for commencing proceedings under this Constitution; that, after such publication, the electors should be appointed, and the senators and representatives elected; that the electors should meet on the day fixed for the election of the President, and should transmit their votes, certified, signed, sealed, and directed, as the Constitution requires, to the secretary of the United States in Congress assembled; that the senators and representatives should convene at the time and place assigned; that the senators should appoint a president of the Senate for the sole purpose of receiving, opening, and counting the votes for President; and that, after he shall be chosen, the Congress, together with the President, should, without delay, proceed to execute this Constitution."

In this form it seems \* to have been approved without debate by the Convention immediately after the signing of the Constitution on September 17.

\* Elliot, v. 602, note 266.

## LETTER TO CONGRESS.

Randolph wanted to issue the Constitution with an address, and at the end of his draft wrote quite lengthy provisions upon the form which he thought proper; but the committee did not report any address at all. On September 10, just before the report of the Committee on Style, Charles Pinckney moved "that it be an instruction to the committee for revising the style and arrangement of the articles agreed on, to prepare an address to the people, to accompany the present Constitution, and to be laid, with the same, before the United States in Congress," and the motion was referred to the committee *nem. con.* Possibly it was in pursuance of this reference that the Committee on Style prepared the well-known letter to Congress; they did not report any address specially to the people.

On September 15, during the comparison by the Convention of the report of the Committee on Style with the articles agreed on, Carroll suggested that an address to the people ought to be prepared, as they were used to addresses on great occasions. He moved that a committee be appointed. Rutledge and Sherman objected on the grounds that it was improper for the Convention to prepare an address before it could know whether Congress would approve the Constitution, and that it was unnecessary. The motion was lost.

## SOME IMPORTANT DEFEATED PROPOSALS.

## ASSUMPTION OF STATE DEBTS.

On August 18 Rutledge moved that a grand committee be appointed to consider the necessity and expediency of the United States assuming all the State debts. He thought this was just, because the debts were contracted in the common defence. King, Charles Pinckney, and Ellsworth were in favor of the motion, while Sherman thought it would be enough to authorize the assumption. King remarked that without some such provision the State creditors, who constituted an active and formidable party, would be opposed to a plan which transferred to the Union the best resources of the States: he also suggested that all unlocated lands of particular States ought to be given up if the State debts were to be assumed. Rutledge's motion was carried by six ayes to four noes, and on August 21 Livingston made a report from the committee recommending the adoption of the following provision:—

“The legislature of the United States shall have power to fulfil the engagements which have been entered into by Congress, and to discharge, as well the debts of the United States, as the debts incurred by the several States, during the late war, for the common defence and general welfare.”

When this clause was taken up, however, on August 22, the portion relating to the State debts seems to have been silently allowed to lapse without any vote or discussion. The disposal of the rest of the clause has been considered under Article VI., Clause 1.

## UNIVERSITY.

Charles Pinckney's speeches show\* that his draft conferred on the general government the power to establish a federal university, and on August 18 he introduced into the Convention certain resolutions as to powers which he proposed should be conferred on Congress; among these was one "to establish seminaries for the promotion of literature, and the arts and sciences." On the same day, also, Madison introduced certain resolutions, among which was a proposed power to Congress "to establish a university." These proposals were referred to the Committee of Detail, but no report upon them was made.

On September 14, during the comparison by the Convention of the report of the Committee on Style with the articles agreed upon, Madison and Charles Pinckney moved to insert in the list of powers to be vested in Congress a power "to establish a university, in which no preferences or distinctions should be allowed on account of religion." Wilson supported the motion, but Gouverneur Morris said that it was unnecessary; the exclusive power at the seat of government would reach the object. The motion was lost by four ayes to six noes.

## CANALS ; CORPORATIONS.

On August 18 Madison suggested that power should be conferred on Congress "to grant charters of incorporation in certain cases where the public good may require them, and the authority of a single State may be incompetent." Charles Pinckney also suggested

\* Moore's American Eloquence, i. 369.

on the same day that power be conferred on Congress “to grant charters of incorporation.” Both these suggestions were referred to the Committee of Detail, but no report upon them was made.

On September 14, during the comparison of the report of the Committee on Style with the articles agreed on, Franklin moved to add after the power “to establish post-offices and post-roads” a power “to provide for cutting canals where deemed necessary.” Wilson seconded the motion, but Sherman objected that the expense would fall on the United States but the benefit accrue to the places where the canal might be cut. Madison moved to enlarge the motion so as to read “to grant charters of incorporation where the interest of the United States might require, and the legislative provisions of individual States may be incompetent.” His object was to secure easy communication, which ought to be done, he said, now that the political obstacles were to be removed. Randolph and Wilson supported the motion, while Mason was in favor only of the provision for canals, as he feared monopolies might be established. King opposed the motion, and thought it would prejudice the States against the plan. New York and Philadelphia would refer it to the power to establish a bank, which had been a subject of contention in those cities, while other States would refer it to mercantile monopolies. The vote was taken first on the power as to canals, and it was defeated by three ayes to eight noes; so the whole fell.

#### NEGATIVE ON STATE LAWS.

There were repeated efforts made in the Convention to confer on the general government the power to

negative State laws. Indeed, some months before the Convention met, Madison—who was one of the strongest supporters of this power—wrote\* to two of his correspondents advocating such a provision. Charles Pinckney was also strongly in favor of it, and his speeches show † that his draft gave Congress a negative upon all such legislation of each State as should appear to them improper. The sixth resolution of the Virginia plan also proposed to confer power upon the national legislature “to negative all laws passed by the several States, contravening, in the opinion of the national legislature, the articles of Union, or any treaty subsisting under the authority of the Union;” and this was approved ‡ by the Convention on May 31. On June 8 Charles Pinckney and Madison moved to insert “to negative all laws which to them shall appear improper” instead of the language which had been adopted, and there was some memorable debate (see “Article I., Section 8, Generally”) upon the control of the States and their tendency to encroach on the federal government, but the motion was lost. On July 17 the subject was taken up again, and after a short discussion the power to negative State laws was struck out. Gouverneur Morris was opposed to conferring such a power, as it would disgust the States, while Madison thought it essential.

On August 23 Charles Pinckney again brought up the same subject, and moved to confer upon Congress a power “to negative all laws passed by the several

\* Letters to Jefferson of March 19 and to Washington of April 16, 1787.

† Moore's American Eloquence, i. 365–66.

‡ Elliot, v. 139–40.

states, interfering, in the opinion of the legislature, with the general interests and harmony of the Union, provided that two-thirds of the members of each House assent to the same."

Madison, Wilson, and others supported the motion, but some were strongly against it. Rutledge said it would certainly damn the Constitution, and Mason wanted to know how it was to be carried out. "Is no road nor bridge to be established without the sanction of the general legislature? Is this to sit constantly, in order to receive and revise the State laws?" Gouverneur Morris did not see either the utility or practicability of it, but wanted it committed. A motion to commit having been defeated, Pinckney withdrew his motion.

On September 12, after the report from the Committee on Style, Madison again expressed his opinion that a negative on State laws was necessary, but said this had been overruled. He made no motion.

#### SUMPTUARY LAWS.

On August 20 Mason moved a new clause to give Congress power "to enact sumptuary laws;" he thought no government can be maintained unless the manners be made consonant to it. Gouverneur Morris thought that such laws tend to create a landed nobility, and Ellsworth thought the best remedy was to enforce taxes and debts. After a very short discussion, the motion was defeated by eight noes to three ayes.

Again, on September 13, after the report of the Committee on Style, but just before they proceeded to consider it, Mason spoke upon this subject, referred to

the extravagance of manners prevalent and the excessive consumption of foreign superfluities, and moved a committee to report articles of association for encouraging, by the advice and example of the members of the Convention, economy, frugality, and American manufactures. The motion was carried, and a committee, consisting of Mason, Franklin, Dickinson, Johnson, and Livingston, was appointed ; but it made no report.

#### TO APPOINT TREASURER.

The power “to appoint a treasurer by ballot” was contained among the powers conferred on Congress by the Constitution until quite late in the Convention’s proceedings. It originated in the Committee of Detail, and Randolph’s draft contains a marginal writing by Rutledge among the legislative powers “to appoint a treasurer by ballot.” The same clause was also contained among the powers of the legislature of the United States in the draft of August 6, reported from the committee. When this came up before the Convention, on August 17, Read wanted to strike it out, so as to leave the appointment to the executive ; but his motion did not come to a vote. On Gorham’s motion the clause was changed so as to read by *joint* ballot, and was then agreed to. It was later referred to the Committee on Style, and they reported it as a part of the first clause of Section 8, Article I. ; but during the comparison of the report of the Committee on Style with the articles agreed on, on September 14, Rutledge moved to strike out the provision and leave the treasurer to be appointed as other officers, and Gouverneur Morris and Charles Cotesworth Pinckney supported him. Gor-

ham, King, and Sherman opposed the motion, and thought that as the people were used to electing treasurers, the motion would have a mischievous tendency ; but it was carried by eight yeas to three noes.

#### BILLS OF CREDIT.

A power to Congress to emit bills on the credit of the United States was contained in the draft reported by the Committee of Detail on August 6, but was later struck out ; it is considered under Article I., Section 8, Clause 2.

#### IMPAIRING OBLIGATION OF CONTRACTS.

A proposal was made in the Convention to prohibit the United States, as well as the States, from impairing the obligation of contracts, but was defeated. It is considered under Article I., Section 10, Clause 1.

#### PRIVILEGES OF MEMBERS OF CONGRESS.

Some proposals made in regard to extensive privileges of members of Congress, which were later defeated, are considered under Article I., Section 6, Clause 1.

#### QUALIFICATIONS FOR SUFFRAGE.

A broad limitation on the right of suffrage in elections for the general government was proposed in the Convention and defeated. It is considered under Article I., Section 2, Clauses 1 and 2.

## QUALIFICATIONS OF OFFICERS.

On June 26, during the discussion of the Senate in committee of the whole, Mason suggested the propriety of annexing a property qualification to the office ; he thought one important object in the Senate was to secure the rights of property, and that that object could not be attained if needy persons were appointed. He did not, at this time, make any motion, nor was there any discussion of his suggestion ; but at a later period, on July 26, when the Convention was about to refer all the resolutions it had agreed upon to the Committee of Detail, he moved the following much more general proposition upon the subject of property qualifications :—

“That the committee of detail be instructed to receive a clause, requiring certain qualifications of landed property and citizenship in the United States, for the executive, the judiciary, and the members of both branches of the legislature of the United States ; and for disqualifying all such persons as are indebted to, or have unsettled accounts with, the United States, from being members of either branch of the national legislature.”

After some discussion, and after the word “landed” had been struck out, the first part of the resolution, down to the end of the first clause upon qualifications, was approved. The rest was disapproved, members thinking it better to leave the subject to the legislature. Gouverneur Morris opposed going into “such minute regulations in a constitution.” Mason and Madison both stated during the discussion that they had witnessed the zeal of men having accounts with the public to get into the legislatures for sinister purposes.

The reason for the defeat of the last portion probably was that members were reminded that such a provision might exclude more who ought to be admitted than who ought not. A motion to add pensioners to the disqualified class was also defeated.

This became the twenty-third resolution of the Convention, and was referred to the Committee of Detail on July 26. Randolph wrote in his draft under the House of Delegates a query "if a certain term of residence, and a certain quantity of landed property ought not to be made by the Convention further qualifications;" but this was later cancelled. Under the Senate, also, in addition to the qualifications clearly required by the resolutions, he wrote "previous residence for one year, or possession of real property within the State for the whole of one year, or enrolment in the militia for the whole of a year;" but this also he cancelled later, and wrote opposite it on the margin, "These qualifications are not justified by the resolutions." The Committee of Detail reported the following general provision upon the subject under Article VI. :—

"SECTION 2. The legislature of the United States shall have authority to establish such uniform qualifications of the members of each House, with regard to property, as to the said legislature shall seem expedient."

When this came up before the Convention, on August 10, Charles Pinckney, Rutledge, and Gouverneur Morris favored the provision, or a similar one, while Ellsworth, Franklin, Madison, and Williamson opposed it. Ellsworth thought the circumstances in different parts of the United States so different as to render it im-

proper. Franklin expressed his dislike of "everything that tended to debase the spirit of the common people. . . . Some of the greatest rogues he was ever acquainted with were the richest rogues." The clause was disagreed to.

#### JURIES ; BILL OF RIGHTS.

On September 12, just before the Convention began the final comparison of the revised draft with the matter it had agreed upon, Williamson observed that no provision had yet been made for juries in civil cases, and suggested the necessity of it. Gorham replied that the representatives might safely be trusted, and that it was impossible to discriminate equity cases from those in which a jury was proper. Mason admitted this difficulty, but thought some general principle could be laid down; he suggested the need of a bill of rights, and seconded a motion Gerry then made for a committee to prepare one. Sherman thought the State declarations of rights were not repealed, and would be sufficient; but Mason replied that the laws of the United States were to be paramount to State bills of rights. The Convention was evenly divided\* on the motion for a committee to prepare a bill of rights, and the whole matter was then dropped.

But again, on September 15, during the comparison by the Convention of the report of the Committee on Style with the articles agreed on, Charles Pinckney and Gerry moved to annex at the end of the clause (Article III., Section 2, Clause 3) relating to juries in

\* Elliot, v. 538. The Journal reads that this motion was unanimously lost. Ibid., i. 306.

criminal cases the words "and a trial by jury shall be preserved as usual in civil cases;" but Gorham, King, and Charles Cotesworth Pinckney thought such a provision would be very embarrassing, because of the varying rules as to juries in different States, and the motion was disagreed to *nem. con.*

#### LIBERTY OF THE PRESS.

Charles Pinckney's draft as printed in Elliot contains in the twenty-fourth clause of Article VI. a provision that "the legislature of the United States shall pass no law . . . touching or abridging the liberty of the press;" and his speeches\* show that his draft did actually contain a provision upon the subject. He said that he considered it essential. On August 20 he introduced into the Convention a series of resolutions, among which was a provision that "the liberty of the press shall be inviolably preserved." This was referred to the Committee of Detail, but no report was made on it. Again, on September 14, during the comparison of the report of the Committee on Style with the articles agreed on, he and Gerry moved to insert a declaration "that the liberty of the press should be inviolably preserved;" but Sherman replied that it was unnecessary,—the power of Congress did not extend to the press. The motion was lost by four ayes to seven noes.

#### EMBARGOES.

On August 28, while the clause (Article I., Section 10 Clause 1) containing absolute prohibitions on the

\* Moore's American Eloquence, i. 369.

States from doing certain things was under consideration, Madison moved to insert a prohibition on the States from laying embargoes. Sherman and Mason both opposed it, as the power ought to remain to the States, and might be very valuable in some cases, while Gouverneur Morris thought it unnecessary, as the power already given the general legislature to regulate trade between State and State was sufficient. The motion was lost.



as in the confederation. But the object of our preamble ought to be briefly to ~~express~~ to ~~express~~ declare, that the present federal government is insufficient to the general happiness, that the conviction of this fact gave birth to this convention; and that the only effectual mode which they can devise, for curing this insufficiency, is the establishment of a supreme legislative, executive and judiciary - ~~and other necessary departments~~:  
~~and other necessary departments~~  
resolution changing their form of resolution to ~~any other form~~ ~~and back~~  
~~that~~ Let it be ~~not~~ declared, that the following are the ~~form~~ ~~constitution~~ ~~constitution and fundamental laws of government for the United States — After this introduction, let us proceed to the~~

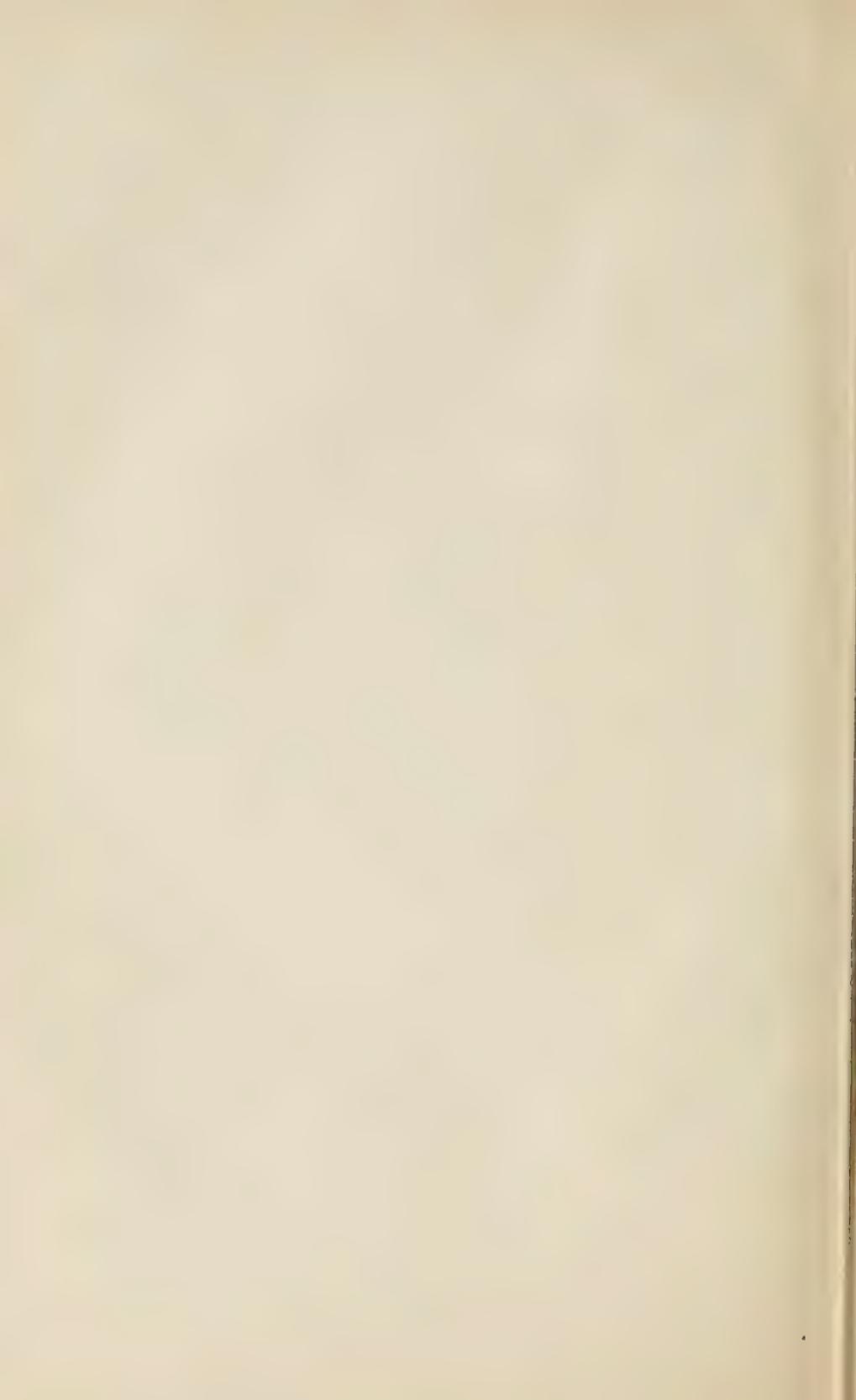
2. First resolution — This resolution involves three particular

1. The style of the United States, which may continue as it now is.
2. a declaration that a supreme legislature, executive and judiciary shall be established, &c
3. a declaration, that these departments shall be distinct, except and independent of each other, except in specified cases.

In the draught of a fundamental constitution, two things have  
attention:

1. To insert general principles only, lest the operations  
of government should be clogged by rendering the  
provisions permanent and unalterable, which ought  
to be accommodated, to times and events, and  
to use simple and precise language, and give  
real proportions, according to the example of the  
several constitutions of the several states  
in the construction of constitutions, which  
rily differ from the places
2. To use simple and precise language, and give  
real proportions, according to the example of the  
several constitutions of the several states  
in the construction of constitutions, which  
rily differ from the places

1. A preamble seems proper not for the purpose of designating the  
ends of government and human policies - This ~~is, if you please~~  
~~is not the best way to proceed~~ is a better way to state the theory of  
theory, however proper in the first formation of state go-  
vernments, ~~now~~ unfit them; since we are not working on the natu-  
ral rights, ~~now~~ yet gathered into society, but upon those rights,  
modified by society, and supporting what we call ~~states~~ ~~the rights~~  
of states. Nor yet is it proper for the purpose of mutually, ~~the~~  
give the faith of the parties for the observance of the articles.





of the legislative term; and  
one in every term of ten years  
hereafter.

- 1. At the census being taken and returned, the  
legislature shall apportion the representa-
- tion:
- 2. 5. The qualifications of a delegate shall be  
the age of twenty five years at least, and  
written notice of fraud, property, or cri-  
minal qualifications shall be made by the government & further  
qualifications.
- 3. 6. Their duration in office shall be for two  
years
- 4. 7. The elections shall be held on the same day  
throughout the states, except in case of accident,  
and when an adjournment to the succeeding  
day may be necessary.
- 5. 8. The ~~people~~ shall be polled by the ~~national~~  
~~legislations~~ from time to time, or on their  
adjourned by the national legislature.
- 6. 9. So shall the presiding officer.
- 7. 10. Votes shall be given by ballot, unless  
 $\frac{2}{3}$  of the national legislature shall direct  
to vary the rule.

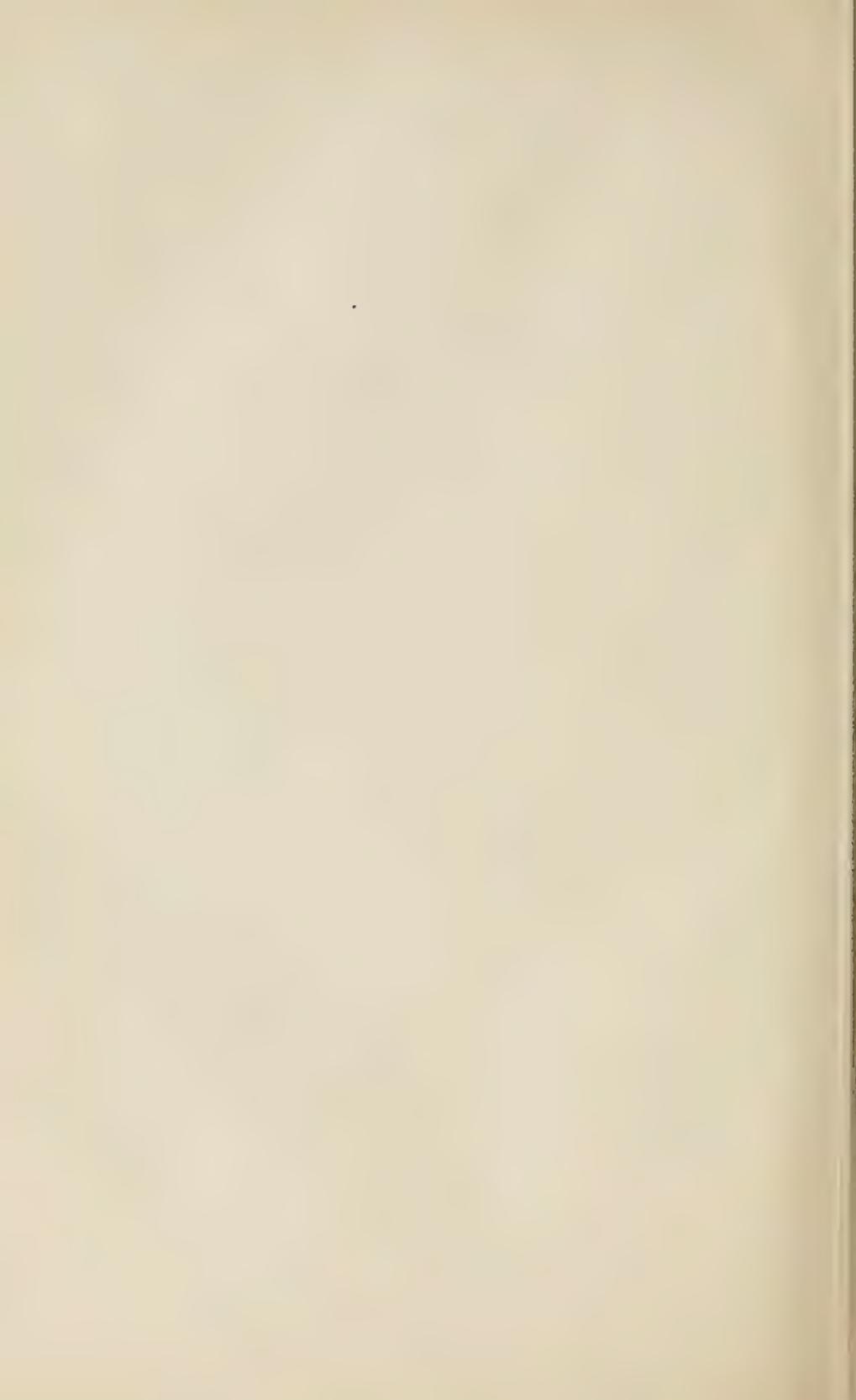
In the next place, treat of the legislation, judiciary and executive in their order, and afterwards, of the miscellaneous subjects, as they occur; bringing together all the resolutions belonging to the same point, to which they may be sent, and having to the last the other respects to introduce the government and about — take the following, then is therefore submitted

## I The Legislative

- 1. shall consist of two branches: viz:
  - (1) a house of delegates; and
  - (2) a senate;
- 2. which together shall be called "the legislature of the United States of America."

### 3. The house of delegates

- 1. shall never be greater in number than to effect this, pursue a rule, similar to that (per servia) in the 16<sup>th</sup> article of the New-York constitution.
- 2. each state shall send delegates, according to the ratio, recommended by congress
- 3. to ascertain this point, let a census be taken





During the 6-7-1

17. Vacancies shall be supplied by the state legislature which shall call a convention to fill the same.

18. The house shall have power to make rules for its government more than one week, nor without such convenience leaving other places, ~~the~~ <sup>by</sup> none of which they are acting.

19. The house shall not adjourn without the concurrence of the senate for more than one week.

### A(6) The Senate -

consists of members, not exceeding 100. The legislative body shall elect two members senators using their discretion as to the time and manner of choosing them.

3. The qualification of a senator shall be

(+) on the age of 25 years at least:

on citizenship in the United States;

and property to the amount of

A. Qualifications in offices, shall

1. They shall be elected for six years and immediately after the first election they shall be divided into three classes, each class to consist of three and numbered 1, 2, 3: ~~and~~ <sup>and</sup> the tenth of the members of the first class shall be vacated at the expiration of their first term, of the second class at the expiration of the fourth,

v 11. The qualification of electors shall be the same throughout the state, or  
legislature shall hereafter adopt some uniform qualification throughout the state.

~~not be sold~~

These publications in ~~part~~ <sup>Society of mind</sup> ~~knowledge~~ for one year, or possession of real property  
paid by the subscribers. either to state for the whole of one year, or in <sup>one</sup>  
in the months for the whole of a year.

### ~~Books to be prohibited to electors,~~

v 12. a majority shall be a quorum for business; but a smaller number,  
may be authorized by the house to call for and hear and question any other  
member, and to adjourn for any time not exceeding one week.

v 13. <sup>The right</sup> power over its members may be broken. The house of delegates shall  
have power over its own members. Normal restraint

v 14. The delegates shall be prohibited from any correspondence during their  
attendance,

v for so long a time before  
or and after,

v as may be necessary for travelling to and from the legislature  
~~and they shall be prohibited to enter the privilege chamber~~

v 15. They shall be prohibited to make any speech to

v 16. They shall be prohibited to make any speech to





for transmission

method for the better conducting of the business  
of the Senate, which is as follows.

- a. The wages of the senators shall be paid out of the ~~and~~ treasury of the United States.
- b. These wages for the first six years shall be ten dollars per diem —  
at the beginning of ~~every~~ <sup>after the first</sup> ~~the~~ <sup>in</sup> sixth year, the sum named
- c. ~~and~~ <sup>and</sup> shall cause a special jury of the most respectable
- d. merchants and farmers to be summoned to declare what shall have been the average value of wheat during the last six years, in the state, when the legislature may be sitting; and
- e. ~~and~~ <sup>and</sup> for the six subsequent years, the senators shall receive ten dollars per diem, the increased value of ~~and~~ <sup>and</sup> books of wheat.
- f. ~~and~~ <sup>and</sup> the Senate shall have power to make rules for its own government.
- g. 12. The Senate ~~shall~~ <sup>will</sup> not adjourn without the concurrence of the house of delegates for more than one week, 3 days,
- h. <sup>or</sup> without such concurrence to any place other than that where they are sitting.

or and of the third class at the end of the sixth year, and so on conti-  
nually, that a third part of the senate may be biennially chosen.

• 3. A majority shall be a quorum for business, but a smaller number  
may be authorized to call for and furnish non-attending members,  
and to adjourn from time to day.  
• Each senator shall have the vote  
• The senate shall have power over its own members,  
• The senators shall be privileged from arrest during their  
residence,

or and for so long a time before  
or and so long after,

as may be necessary for travelling to and from the  
legislative

• 4. The senators shall be ineligible to and incapable of holding  
any office under the authority of the united states,  
during the term for which they are elected,  
or and for one year thereafter,

~~and in the intervals between their election and their~~





government

under the foregoing restrictions, and  
without the concurrence of the majority for an amendment,  
and in case, unless a supermajority.

- v. 5. To make war, and raise armies, & equip fleets.
- v. 6. To provide tribunals and punishment for non-officers  
of Indian Affairs.
- v. 7. To declare the law of piracy, felonies and captures on the high  
seas, and captures on land.
- v. 8. To appoint tribunals inferior to the supreme judiciary.
- v. 9. To adjust upon the plan best for us, all disputes in  
between the states respecting boundary & boundaries, & other  
matters which a state may have with another state, or with  
a foreign power.
- v. 10. To regulate the commerce and intercourse between the states, and  
with foreign powers, & to establish a post office, to regulate the value of  
the money used in payment of debts, to regulate the coinage of the  
United States, & to prohibit the exportation of bullion.
- v. 11. To establish a post office.
- v. 12. To regulate the collection of debts, to regulate the value of  
the money used in payment of debts, to regulate the coinage of the  
United States, & to prohibit the exportation of bullion.
- v. 13. To establish post-offices.
- v. 14. To subdue a rebellion in any particular state, or the  
States, or of a number of them.
- v. 15. To erect articles of war.
- v. 16. To regulate the force permitted to be kept in each state.
- v. 17. To establish a revenue system.
- v. 18. To prohibit a revenue system.
- v. 19. To define it to be treason to levy war, or adhere to the same.

The following are  
the legislation papers; with certain exceptions; and under  
certain instructions; or which; notwithstanding

卷之三

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for the further hastening debts and necessities of the union  
age. 1. To raise money by taxation calculated as to sum and best suited rates for

### Exception

V. 1. are due to an appeal such  
v. 2. resulting in any glorification of individuals or groups as the  
v. 3. as due to my own brotherhood. *Very* likely this may

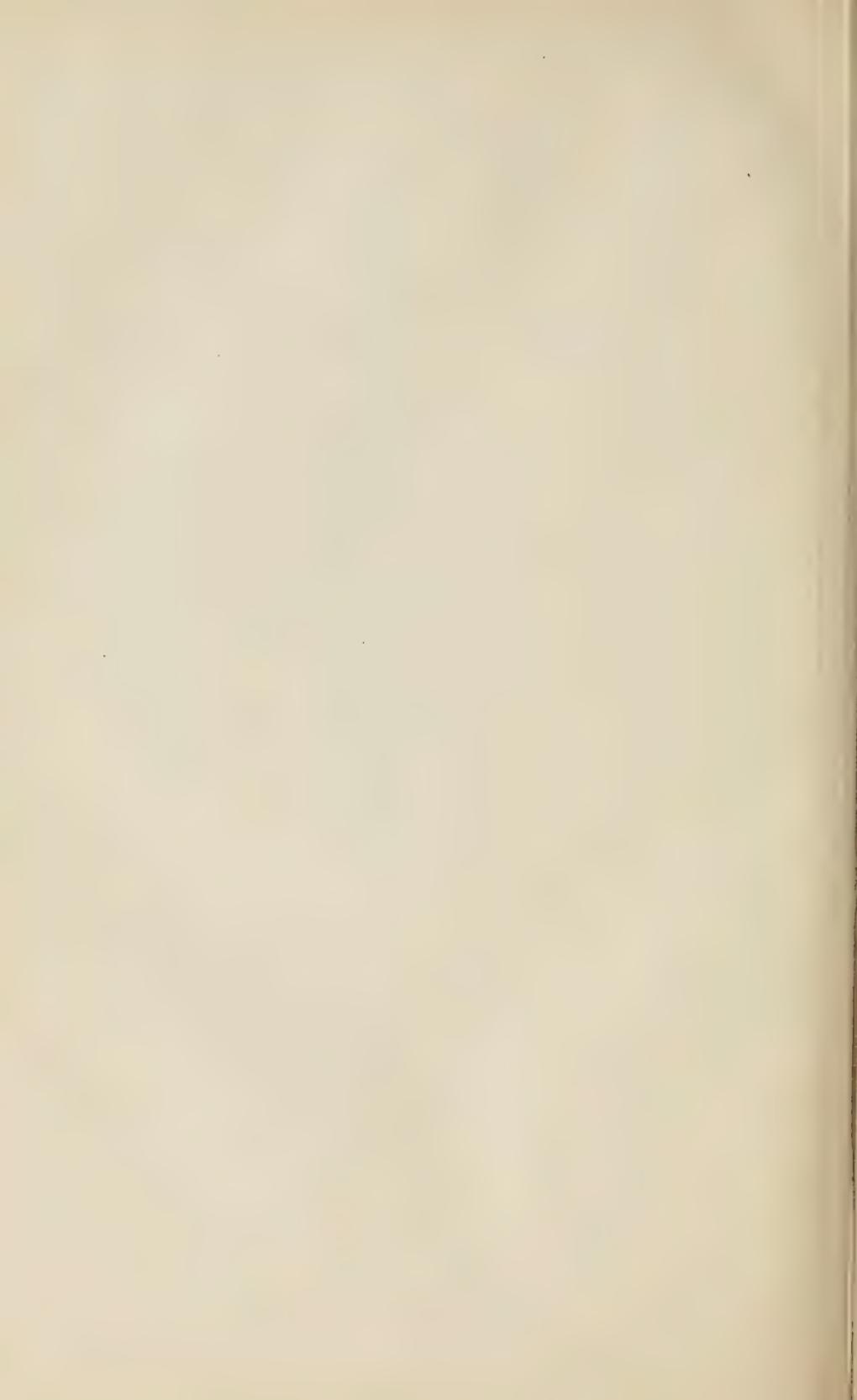
Resto.

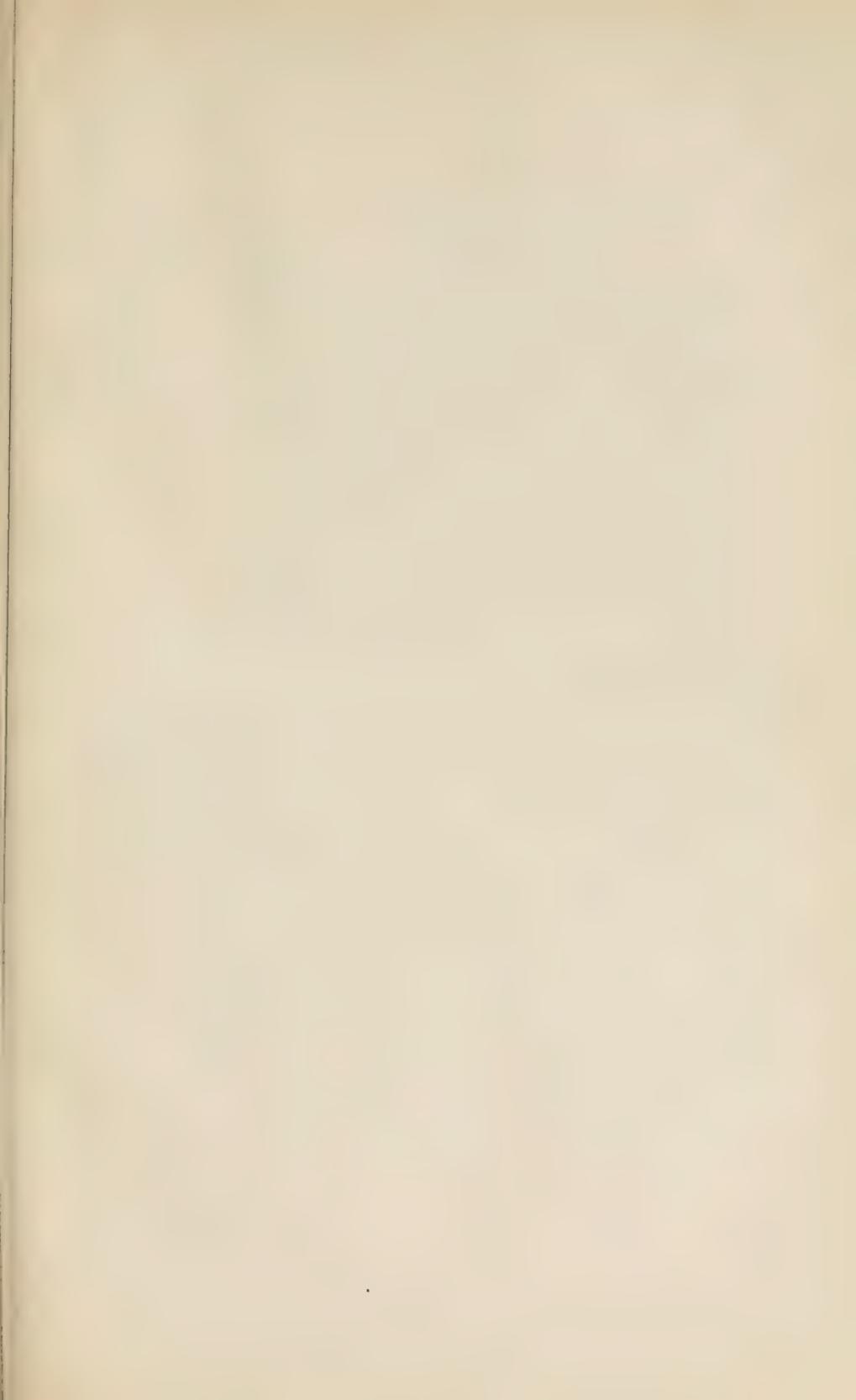
9/3/07. The members  
of the Association  
will not be passed, but with the consent of  
the members in the societies  
and some few of representatives.

~~or notwithstanding any other regulation—and this rule shall, however, be subject to~~

3. The proposal to make treaties of commerce

HISTORICAL





President of the  
United States  
of America.

+ the command in chief  
of the land & naval forces  
of the army & the militia  
of the two U. S. states  
of both houses to the before  
and time of such an act & such  
time as concern the same

(1)

A no longer serve during  
the term of service of the  
Executive

1. shall consist of a single person,
2. who shall be elected by the Electors chosen  
to elect the President of the United States,  
and hold his office for the term of six years;
3. and shall be ineligible thereafter;

5. His powers shall be

1. to carry into execution the national laws;
2. to command and repel the militia  
to execute the judgments of the state, to  
put down insurrections, and to oppose the  
invasion or any force foreign or domestic  
against the government;
3. to direct the operations of the state, to  
make war, and conclude peace;
4. to appoint to offices, not otherwise named  
by the constitution;
5. to appoint to offices, not otherwise named  
by the constitution;
6. to be removable on impeachment,  
made before the house of representatives,

and on conviction

of treason

or malfeasance  
in office;

7. to receive a full compensation for  
the duration of his term to hold his office  
the quantum of which shall be settled  
by the national legislature

to be paid out of the national  
treasury A

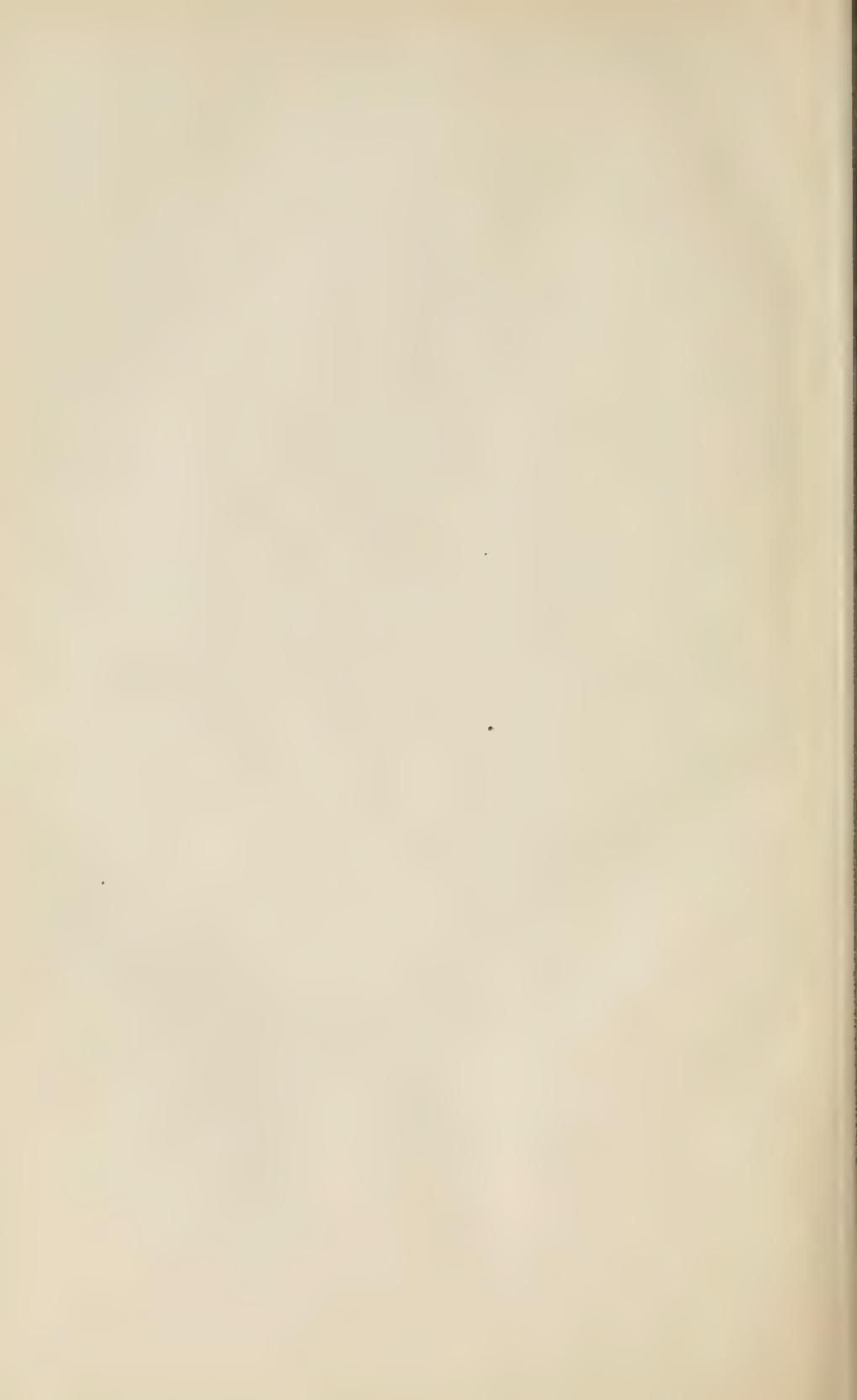
## Report No. 11 in full

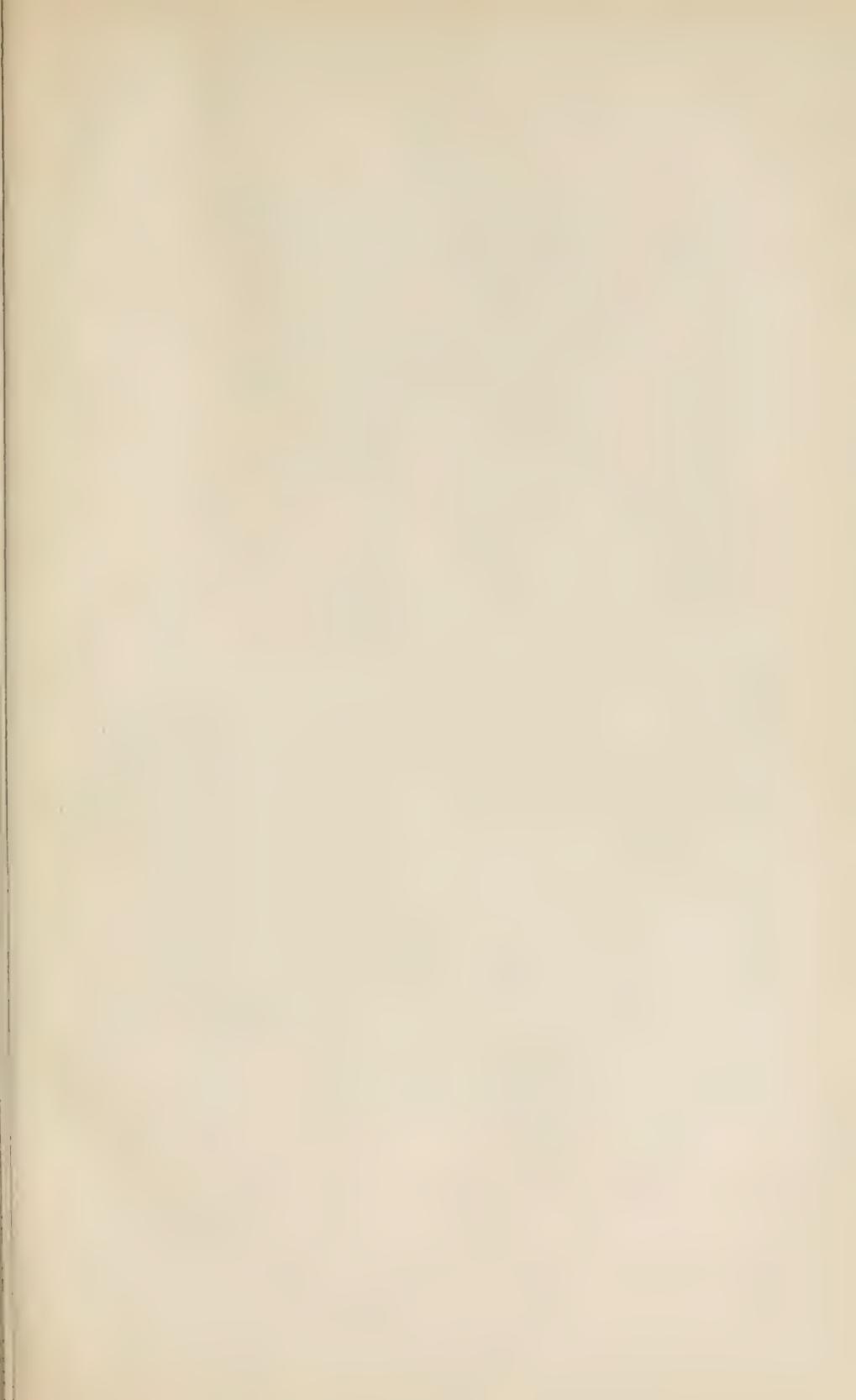
All laws of a particular State, represent Senate, shall be void, and in the  
event thereof shall be vested in the supreme judiciary, all executive  
~~and legislative powers, judicial, legislative, & executive,~~  
~~shall be vested,~~ and no officer or agent of the Government  
shall be bound by any law so declared, as in the State where the same  
was made — And a light touch all laws respecting money  
the paying money into Esq —  
the paying money into Esq —  
2. The powers belonging peculiarly to the representatives are

or

those concerning money-bills

- or 3. The powers delegated for the Senate keeping, are
  - or 1. To make treaties of commerce
  - or 2. To make peace & declare war
  - or 3. To appoint the judiciary
  - or 4. To send Embassadors!





or in cases of diversity, in  
or except in ~~the~~ <sup>original</sup> jurisdiction shall be appellate only  
or make it original and  
in the discretion of the court, in which the legislature shall  
in &c. The whole or a part of the jurisdiction aforesaid  
according to the discretion of the legislature  
may be referred to their inferior tribunals,  
as original tribunals.

### Miscellaneous provisions

1. New states soliciting admission into the Union  
~~to consist of the present limits of the union~~

2. must carefully enquire that is  
~~within the territory of the united states; with~~  
~~the assent of the legislatures~~  
~~of the several states of a particular state, by the~~  
~~consent of a majority of the people of that~~  
~~state~~  
3. shall be admitted only on the gund<sup>st</sup> of 2/3  
~~in the house of representatives and senate~~  
may shall be admitted on the same terms with the original  
states, ~~and the number of states~~  
3. provided always that the legislature may make  
their discretion in admitting or rejecting and may  
make any condition concerning the ~~debt~~ of the  
union a condition.

to be known as legislative acts so as to require ratification by the State of India and each of its officers  
 v. and to be submitted to the union, or the legislative assembly of the state.  
 v. or to the legislative assembly of the state.

v. 5. The judiciary shall consist of one supreme tribunal,

v. 1. shall consist of one supreme tribunal,

v. 6. The judges of such shall be appointed by the senate of India, and shall remain punctually in the service of the state.  
 v. 7. The judges of such shall be appointed by the state.  
 v. 8. The judges of such shall be appointed by the state.  
 v. 9. The judges of such shall be appointed by the state.  
 v. 10. The judges of such shall be appointed by the state.  
 v. 11. The judges of such shall be appointed by the state.  
 v. 12. The judges of such shall be appointed by the state.

v. at stated times,

v. 13. The compensation for their services, to be settled by the legislature.

v. 14. In which no diminution shall be made, so as to affect the members, actually in office at the time of such diminution.

v. 15. All the judges shall hold their offices during good behaviour;  
and shall receive punctually,

v. 16. The judges of such shall be appointed by the state.  
 v. 17. The judges of such shall be appointed by the state.  
 v. 18. The judges of such shall be appointed by the state.  
 v. 19. The judges of such shall be appointed by the state.  
 v. 20. The judges of such shall be appointed by the state.

v. 21. In all cases, arising under laws, passed by the general assembly,

v. 22. To impeachments of officers; and

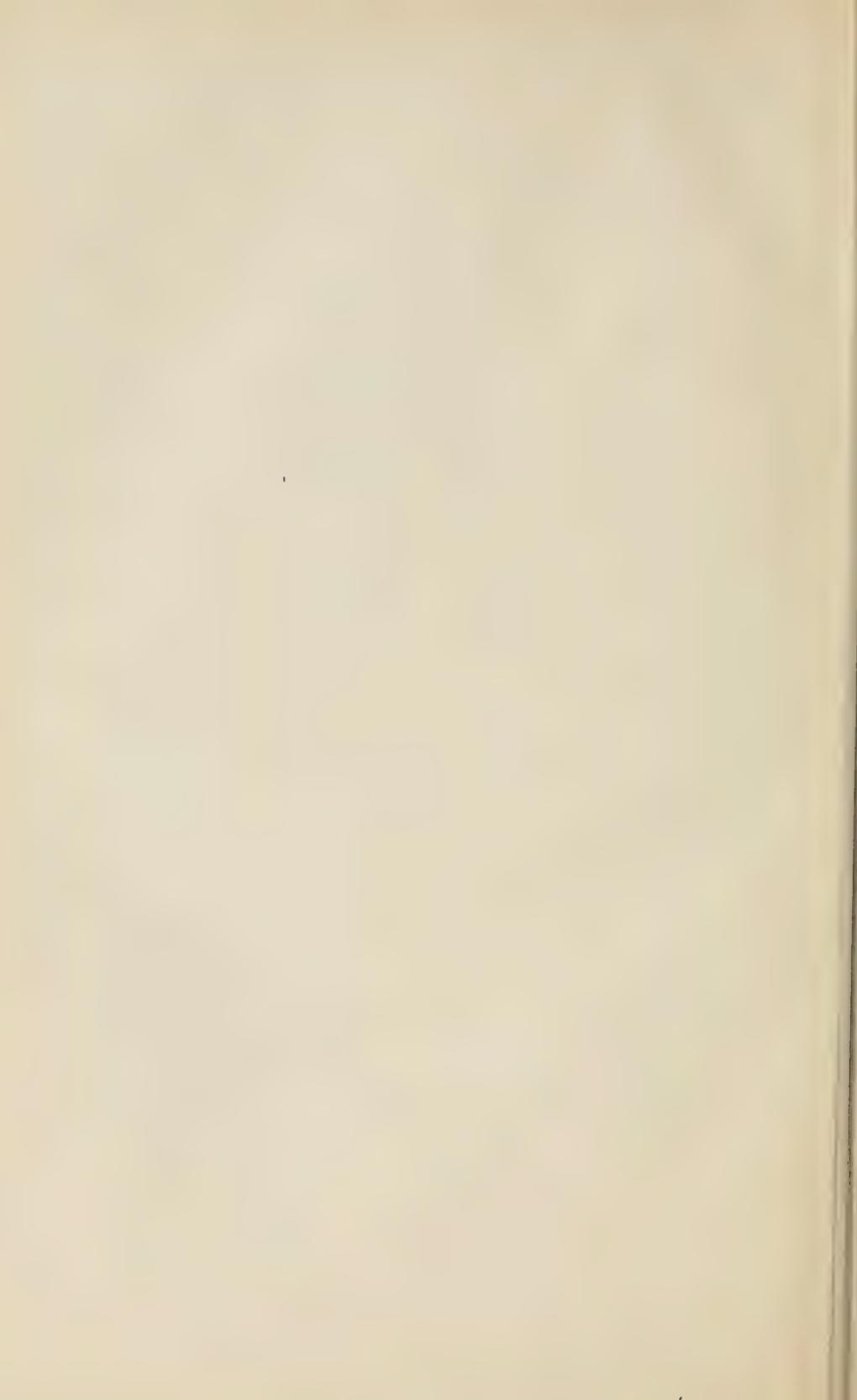
v. 23. To other cases, as the national legislature may appoint, as involving the national

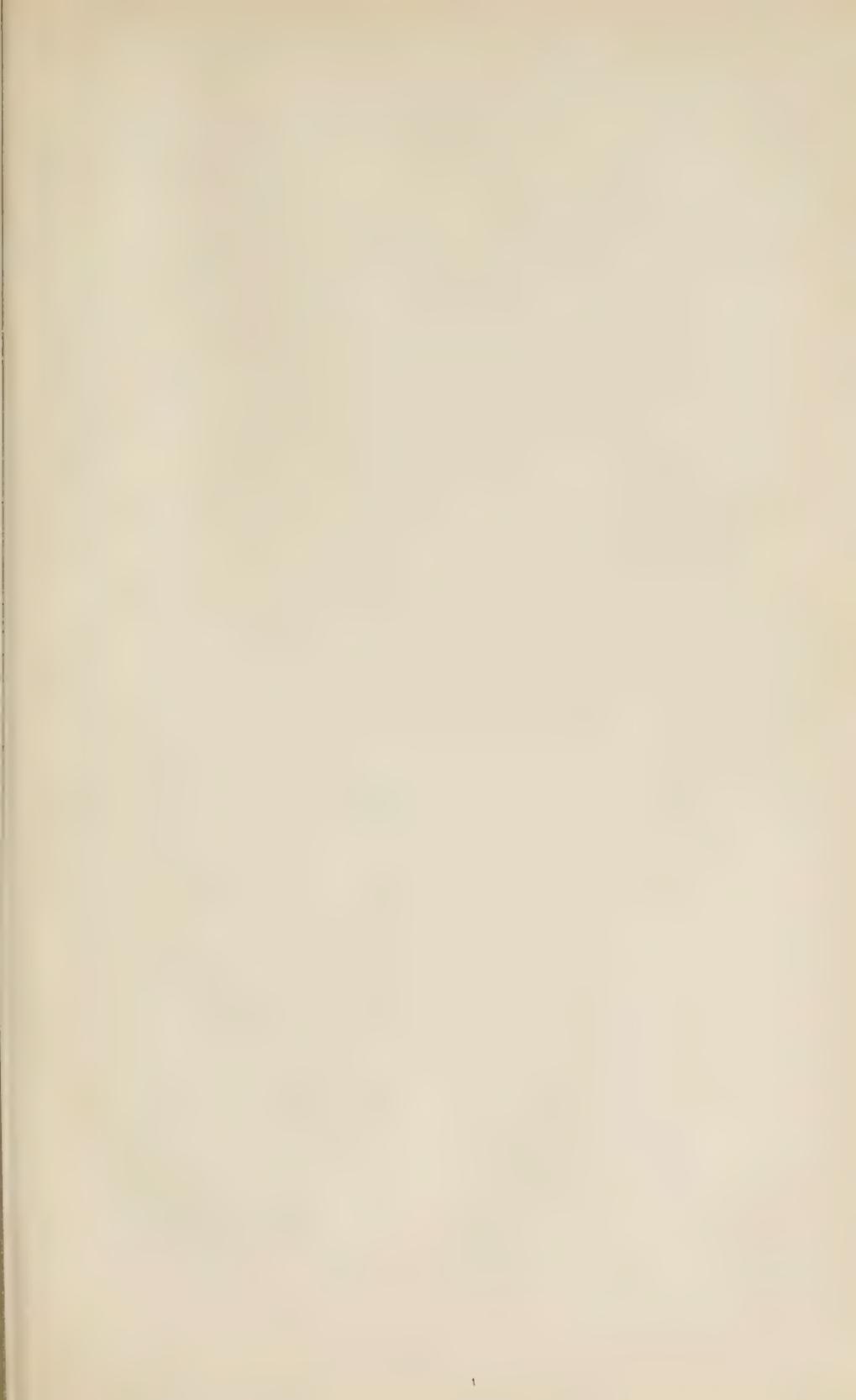
v. peace and harmony;  
 v. in the collection of the revenue;

v. in disputes between citizens of different states;

v. in disputes between different states; and

v. in disputes between states.





Adviser

Convenor

states shall

of 1. The agent of the ~~representatives of the people of~~ gain birth operation to this constitution

- or 2. Each operating state shall notify its agent to congress;
- who shall publish a day for its convenement, not exceeding days after such publication, or next the ~~first~~ <sup>start of</sup> meeting of the operating state, after the affirmation of days from the signing of the agent of the ninth state,
- 1. each legislature shall direct the choice of representatives according to the agent of article and provide for their support.
- 2. each legislature shall also choose senators, and provide for their support
- 3. they shall meet at the place & on the day agreed by congress, or next the ~~first~~ <sup>start of</sup> meeting of the operating state, or any other day.
- A. They shall as soon as may be after meeting elect the operation: and proceed to execute this constitution.

m-2. The guarantee is

1. to prevent the establishment of any government, not republican.

m-3. to protect each state against internal commotion; and

m-2. against external invasion. *in the last case*

m-4. But this guarantee shall not operate without an application from the legislature of a state.

m-5. The legislation executive and judiciary of the states shall sweetly和睦

or to the union, as the national legislature shall direct.

m-6. The ratification of the reform is (After the approbation of congress) to be made

by a special convention, *under Mr. W.  
H.*

recommended by the assembly

to be chosen for the express purpose

of considering and approving or rejecting it.

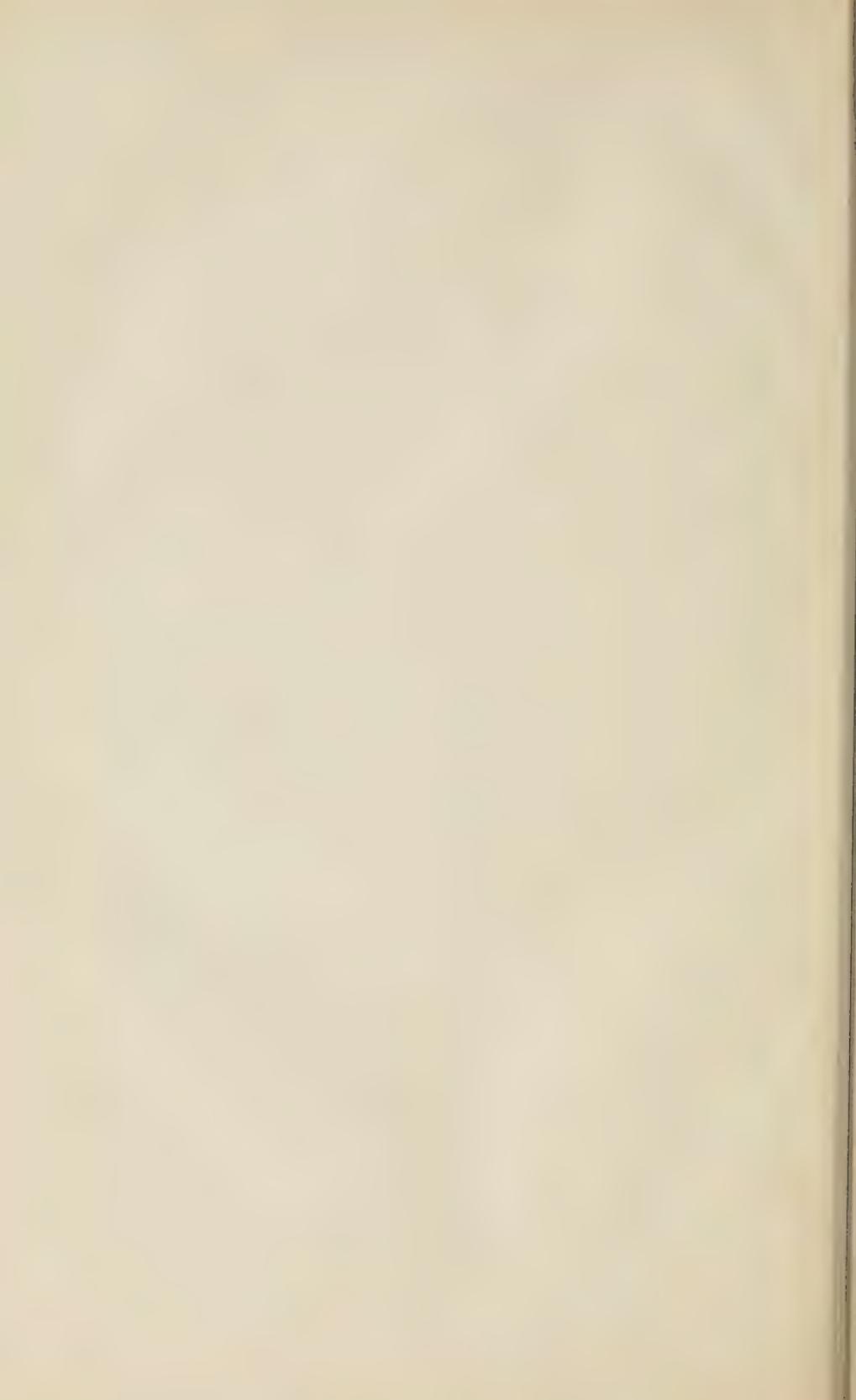
and this recommendation may be used from

time to time to call the state legislatures to the

call a conv<sup>n</sup>. to it. An alteration may be effected in the title of union, by the

majority of both houses of the state legislatures before?

or when? Sc. The slighting of parts ought to be in some terms





to reflect this opinion only.

6. It follows then, that a government of the whole or national principles, with respect to taxation is most eligible.

7. This would lead to a short apportionment of the leading particulars in the constitution.

8. This done, conclude in a suitable manner.

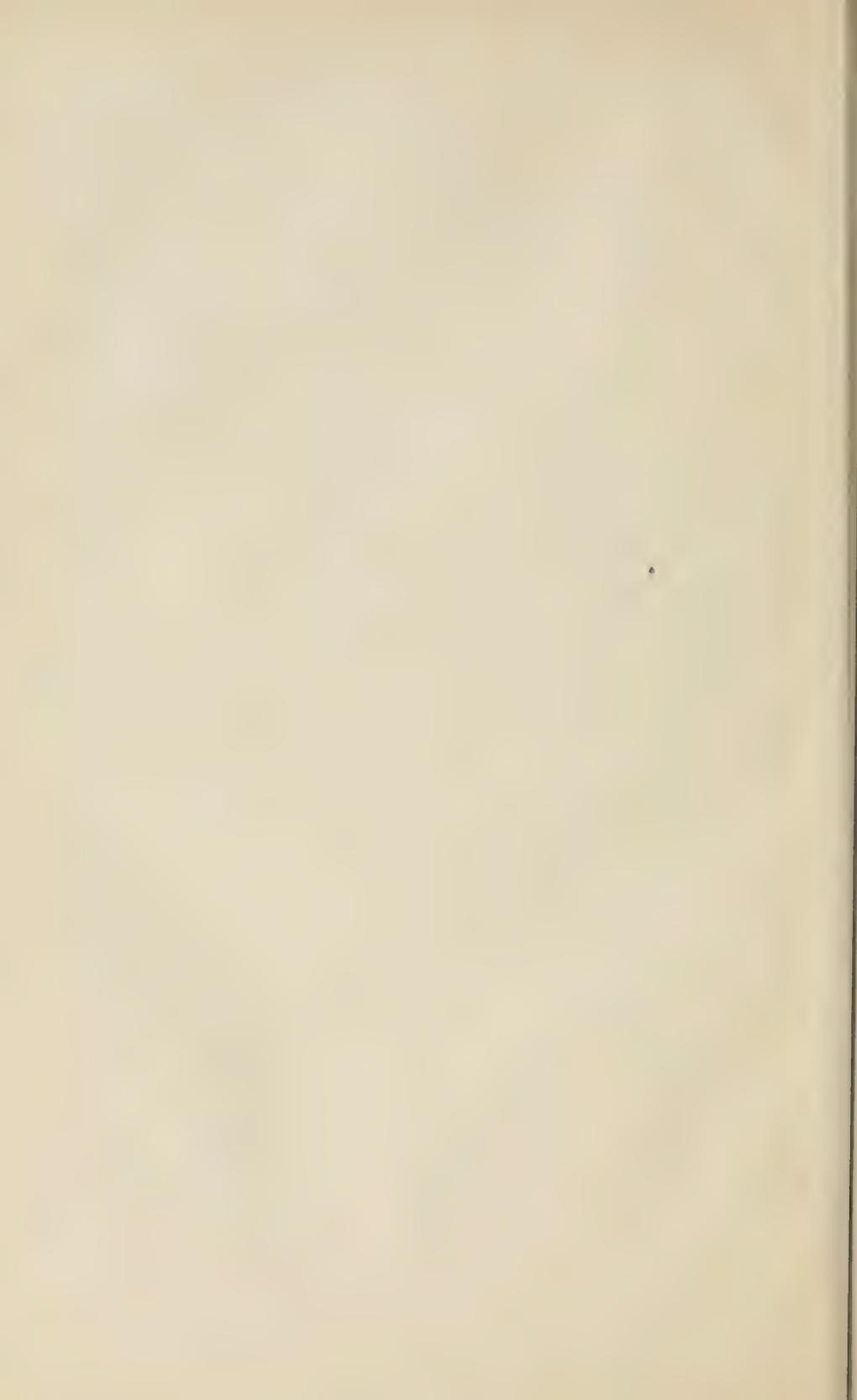
ver.

This is the shortest scheme, which can be adopted. For it would be necessary to ask for new powers, without specifying some reason (it matters not how general soever) which may apply to all of them. Besides we ought to furnish the advocates in the country with some general topics. Now I conceive, that these heads do not more than indicate the main & necessary points.

The object of an address is to satisfy the people of the propriety of the proposed reform.

To this end the following plan seems worthy of adoption

1. To state the general objects of a confederation.
2. To show by general, but pointed observations, in what ~~for~~ respects, our confederation has fallen short of those objects.
3. The powers, necessary to be given, will follow as a consequence of the defects.
4. A question arises, whether these powers can be vested in congress. The answer is, that they cannot.  
But
5. As some states may possibly meditate federal confederations it would be fit now



## NOTE ON RANDOLPH DRAFT.

As the draft of a Constitution which I have reproduced in this work has been seen by Mr. Moncure D. Conway, and he did not regard it as the paper which I am satisfied it is, it will be necessary to detail at some length the arguments which, in my opinion, establish beyond all doubt that it was made for the use of and actually used in the Committee of Detail. The draft in question was found among the papers of George Mason,\* and some account of it is published by Mr. Conway in *Scribner's Magazine* for September, 1887,† and again in his "Life of Edmund Randolph."‡ He says that it is mainly in the handwriting of Randolph; and I have also compared it with Randolph's writing in 1787, and have reached the same conclusion. There are, however, parts in it written by another hand, and this has been identified by Mr. Paul Leicester Ford as that of John Rutledge (Mr. Conway says *Edward* Rutledge, but this is an error). The draft is also mentioned in Miss Rowland's "Life of George Mason."

I understand Mr. Conway to be of opinion that the instrument was drawn by Randolph before the meeting of the Convention, and that it is the paper the latter refers to in his letter of March 27 to Madison. Such was clearly Mr. Conway's view at the date of his article in *Scribner*. But, in the first place, Randolph's letter § does not indicate that he had any actual draft in prepa-

\* See my Preface.

† Vol. ii. p. 313, etc.

‡ P. 71, etc.

§ Conway's "Randolph," p. 71.

ration, but speaks of the propriety of "some general propositions" being prepared, and thus fits in exactly with what the Virginia delegation later did. Again, it is certainly enormously improbable that Randolph would have been content with the mere general resolutions he introduced as the spokesman of the Virginia delegation if he had had in his possession at that time a draft of a constitution made by himself; and to this must be added the fact that he did not at any time in the proceedings refer to the existence of such a sketch. Nor does Madison either do so, though he gives\* some account of the interchange of views among the Virginia delegates while they were awaiting the arrival of a quorum and of the steps which led up to the resolutions introduced by Randolph. Indeed, Madison could not possibly have written what he has there written if he had seen any such paper. Therefore, I think it extremely unlikely on the face of things that this Randolph draft was sketched before the Convention met: men of action do not go to the immense trouble of drawing up a form of constitution and then smother it away out of the sight of their colleagues, who would be only too glad to receive the aid it would afford.

But the internal evidence of the paper settles conclusively that it was drawn up after the Convention had agreed upon the resolutions which were referred to the Committee of Detail on July 26, and in numerous instances its language is modelled upon them with even verbal accuracy. Thus, in carrying on the ineligibility of members of the House to hold office from

\* Elliot, v. 120-21.

the third resolution Randolph first wrote in the draft "they shall be ineligible to," and later interlined after this the words "and incapable of holding;" these latter words being in the resolution referred and having been added there, on motion of Sherman, by the Convention on June 23. The provision that direct taxation shall be proportional to representation is inserted as a restriction on the power to raise money by taxation; it had unquestionably arisen for the first time in the Convention during the struggle over representation. The terms of the guaranty of a republican government, etc., are drawn in the draft in close pursuance of the provision in the resolutions with a variation which the committee doubtless thought a detail. The provisions in the draft for rotation in the Senate bear every appearance of being an effort to carry out the terms of the fourth resolution.

There is even stronger internal evidence. In almost the first paragraph, in arguing the reasons why a preamble seemed proper, the paper sets forth that the object of the preamble ought to be briefly to declare the insufficiency of the present federal government and that the conviction of this fact gave birth to *this Convention*; and then it goes on, "after this introduction, let us proceed to the 2. First resolution." In sketching the details of this, it includes other points, but distinctly carries out the matter included in the *first resolution* of the Convention which had been referred to the Committee of Detail. Again, when the writer went on after this, he writes for his own guidance that he should next treat of the legislative, etc., "and afterwards of the miscellaneous subjects as they occur, bringing together *all the resolutions* belonging to the

same point, howsoever they may be scattered about." And in one place he has suggested certain qualifications—mainly of residence and property—for electors, but has later marked on the margin as to them, "These qualifications are not justified by the resolutions." What can this be supposed, under the circumstances, to refer to but the resolutions adopted by the Convention, which contained nothing upon that subject?

Nor is even this by any means all. The provisions in the draft as to the House of Delegates and the Senate follow very closely those of the resolutions upon the two Houses of legislature, and even minor variations as to the two are to be found carried out, as, for example, in regard to the differing ineligibility of members of the two Houses to hold office. The provisions for a census are identical in both papers. The provisions of the draft as to the executive are evidently modelled on the thirteenth and twentieth resolutions, and the clause upon the judiciary is still clearer, and is indeed taken almost verbatim from the fourteenth and fifteenth resolutions, with one provision from the twentieth, while the clause defining the federal jurisdiction bears strong marks of being an effort to carry out in detail the provisions of the sixteenth resolution. Nor is there a single one of the resolutions omitted from the draft. The seventh is not inserted in the same form, but a provision was drawn by Randolph (top of page 6 of draft) evidently intended to attain the same purpose.\*

Possibly some may find a momentary difficulty from the fact that the draft covers a good many points which

\* See this provision considered under Article VI., Clause 2.

are not included in the resolutions referred, but a very little consideration will show that this is only what ought to be expected. The resolutions were by no means supposed to include the whole of the proposed Constitution, and the Committee of Detail was appointed for the very purpose of sketching the instrument at length, and filling in the details which were required by the general outline of the government contained in the resolutions. It was absolutely necessary that a draft, in order to be of any material use in the committee, should not only carry out all the details of the matters generally provided for in the resolutions, but should contain also many others consonant with them and with the principles of government generally prevailing in the country.

But in reality these provisions, contained in the Randolph draft and not in the resolutions referred, furnish on examination a very strong argument that the draft was actually used by the Committee of Detail in preparing the draft of a constitution which they reported to the Convention on August 6, for many of them can be distinctly seen carried on into the latter paper. Thus Randolph's draft starts out with an argument in favor of a preamble, and then proceeds to the first resolution, which (it goes on) involves three particulars; it then enumerates these as (1) the style of the United States, (2) a declaration that a supreme legislative, executive, and judiciary shall be established, and (3) a declaration that these departments shall be distinct and independent of each other, except in specified cases. When we come to the draft of August 6, it also begins with a preamble; the first article contains a provision as to the style of the United States, and the second article

provides that the government shall consist of supreme legislative, executive, and judicial powers. Randolph's other suggestion of a declaration of the independence of the departments was not incorporated into the Constitution.

And the same thing may be seen in numbers of other instances, among which the following will suffice. They are all suggestions inserted in Randolph's draft which are not derived from the resolutions referred, but are carried on into the draft of August 6 in forms more or less similar to those suggested by Randolph:—The clause providing that each House shall have power to make rules for its government; that the Houses of Congress shall neither separately adjourn for more than a week; that members shall be privileged from arrest; that vacancies in the House shall be supplied by a writ from the governor of the State wherein they shall happen; that trials for criminal offences shall be in the State where the offence was committed, and shall be by jury; that no navigation act shall be passed without the consent of two-thirds of each House; that new States shall only be admitted by a two-thirds vote, and that they shall be admitted on the same terms, except that the legislature may make conditions as to the debt then subsisting; that no prohibition shall be placed on the importation of such inhabitants or people as the several States shall think proper to admit; that the assent of the conventions of        States shall give operation to the Constitution.

The enumeration of the legislative powers—both those inserted by Randolph and the additions of Rutledge—contain numbers of the separate clauses more or less closely as they were reported in the draft of

August 6; and precisely the same thing applies to the provisions as to the powers of the executive. In regard to the power of the House of Delegates over its members, Randolph first wrote a quære, "How far the right of expulsion may be proper;" but cancelled this, and wrote, "The house of delegates shall have power over its own members;" and this latter power is inserted in his draft as to the Senate also. In the draft reported on August 6, the sixth section of the sixth article provided, "Each House . . . may punish its members for disorderly behavior; and may expel a member." In detailing the legislative powers, Randolph first wrote among them the words "3 To make treaties of commerce under the foregoing restrictions; 4 To make treaties of peace or alliance under the foregoing restrictions and without the surrender of territory for an equivalent, and in no case unless a superior title: . . . 17 To send ambassadors." As to the two first detailed powers, he wrote on the margin "qu. as to Senate," and all three are cancelled; and in a later part of the draft he wrote, "The powers destined for the senate peculiarly are 1. To make treaties of commerce: 2 to make treaties of peace and alliance: 3 to appoint the judiciary;" and then there is added, in the handwriting of Rutledge, "4 to send ambassadors." And when we turn for these same subjects to the draft reported by the committee, we find it provides, "Art IX, Sec 1 The Senate of the United States shall have power to make treaties, and to appoint ambassadors, and judges of the supreme court."

Indeed, instance upon instance can be found in which the language of the Constitution reported on August 6 bears the strongest evidence of being a de-

velopment, with modifications, from the more crude suggestions contained in Randolph's draft. I think, therefore, there is no doubt that this paper is what I have stated it to be. The fact that it is mainly in Randolph's handwriting is of course evidence that it was in great part an adaptation by him from the resolutions referred. As to the time of its production, I think it was evidently written in the main soon after the Convention had completed the resolutions, but some portions may well have been inserted later.

It is very possible that other drafts were prepared for the use of the committee about the time of its appointment, and it is not impossible that, either tacitly or by agreement among the members, Randolph and Rutledge, as the two Southerners, united in preparing this draft, while the three Northern men—Gorham, Ellsworth, and Wilson—also drew one or more outlines. One other draft\* is known to exist, but it was evidently drawn at a much later stage of the committee's labors; indeed, they must have been at that time pretty nearly ready to report, for it is extremely similar to the draft actually reported. It is in the handwriting of Wilson, with some marginal alterations by Rutledge.

\* This is preserved among the Wilson Papers in the Historical Society of Pennsylvania.

## APPENDIX.

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### RESOLUTIONS INTRODUCED BY RANDOLPH ON MAY 29 AND CONSTITUTING THE VIRGINIA PLAN.

“1. *Resolved*, that the Articles of Confederation ought to be so corrected and enlarged as to accomplish the objects proposed by their institution; namely, ‘common defence, security of liberty, and general welfare.’

“2. *Resolved*, therefore, that the rights of suffrage in the national legislature ought to be proportioned to the quotas of contribution, or to the number of free inhabitants, as the one or the other rule may seem best in different cases.

“3. *Resolved*, that the national legislature ought to consist of two branches.

“4. *Resolved*, that the members of the first branch of the national legislature ought to be elected by the people of the several states every      for the term of      ; to be of the age of

    years at least; to receive liberal stipends, by which they may be compensated for the devotion of their time to the public service; to be ineligible to any office established by a particular state, or under the authority of the United States, except those peculiarly belonging to the functions of the first branch, during the term of service, and for the space of      after its expiration; to be incapable of reelection for the space of      after the expiration of their term of service, and to be subject to recall.

“5. *Resolved*, that the members of the second branch of the national legislature ought to be elected, by those of the first, out of a proper number of persons nominated by the individual legislatures; to be of the age of      years at least; to hold their offices for a term sufficient to insure their independency; to receive liberal stipends, by which they may be compensated for the devotion of their time to the public service; and to be

ineligible to any office established by a particular state, or under the authority of the United States, except those peculiarly belonging to the functions of the second branch, during the term of service, and for the space of                    after the expiration thereof.

" 6. *Resolved*, that each branch ought to possess the right of originating acts ; that the national legislature ought to be empowered to enjoy the legislative rights vested in Congress by the Confederation, and moreover to legislate in all cases to which the separate states are incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual legislation ; to negative all laws passed by the several states contravening, in the opinion of the national legislature, the Articles of Union, or any treaty subsisting under the authority of the Union ; and to call forth the force of the Union against any member of the Union failing to fulfil its duty under the articles thereof.

" 7. *Resolved*, that a national executive be instituted ; to be chosen by the national legislature for the term of                    ; to receive punctually, at stated times, a fixed compensation for the services rendered, in which no increase or diminution shall be made so as to affect the magistracy existing at the time of increase or diminution ; and to be ineligible a second time ; and that, besides a general authority to execute the national laws, it ought to enjoy the executive rights vested in Congress by the Confederation.

" 8. *Resolved*, that the executive, and a convenient number of the national judiciary, ought to compose a council of revision, with authority to examine every act of the national legislature, before it shall operate, and every act of a particular legislature before a negative thereon shall be final ; and that the dissent of the said council shall amount to a rejection, unless the act of the national legislature be again passed, or that of a particular legislature be again negatived by                    of the members of each branch.

" 9. *Resolved*, that a national judiciary be established ; to consist of one or more supreme tribunals, and of inferior tribunals ; to be chosen by the national legislature ; to hold their offices during good behavior, and to receive punctually, at stated times,

fixed compensation for their services, in which no increase or diminution shall be made so as to affect the persons actually in office at the time of such increase or diminution. That the jurisdiction of the inferior tribunals shall be to hear and determine, in the first instance, and of the supreme tribunal to hear and determine, in the *dernier resort*, all piracies and felonies on the high seas; captures from an enemy; cases in which foreigners, or citizens of other states, applying to such jurisdictions, may be interested; or which respect the collection of the national revenue, impeachments of any national officers, and questions which may involve the national peace and harmony.

“ 10. *Resolved*, that provision ought to be made for the admission of states lawfully arising within the limits of the United States, whether from a voluntary junction of government and territory, or otherwise, with the consent of a number of voices in the national legislature less than the whole.

“ 11. *Resolved*, that a republican government, and the territory of each state, except in the instance of a voluntary junction of government and territory, ought to be guaranteed by the United States to each state.

“ 12. *Resolved*, that provision ought to be made for the continuance of Congress, and their authorities and privileges, until a given day after the reform of the Articles of Union shall be adopted, and for the completion of all their engagements.

“ 13. *Resolved*, that provision ought to be made for the amendment of the Articles of Union whensoever it shall seem necessary; and that the assent of the national legislature ought not to be required thereto.

“ 14. *Resolved*, that the legislative, executive, and judiciary powers, within the several states, ought to be bound by oath to support the Articles of Union.

“ 15. *Resolved*, that the amendments which shall be offered to the Confederation by the Convention, ought, at a proper time or times, after the approbation of Congress, to be submitted to an assembly or assemblies of representatives, recommended by the several legislatures, to be expressly chosen by the people, to consider and decide thereon.”

**RESOLUTIONS REPORTED BY THE COMMITTEE OF THE WHOLE ON JUNE 13.**

“1. *Resolved*, That it is the opinion of this committee, that a national government ought to be established, consisting of a supreme legislative, executive, and judiciary.

“2. *Resolved*, That the national legislature ought to consist of two branches.

“3. *Resolved*, That the members of the first branch of the national legislature ought to be elected by the people of the several states for the term of three years; to receive fixed stipends by which they may be compensated for the devotion of their time to the public service, to be paid out of the national treasury; to be ineligible to any office established by a particular state, or under the authority of the United States, (except those peculiarly belonging to the functions of the first branch,) during the term of service, and, under the national government, for the space of one year after its expiration.

“4. *Resolved*, That the members of the second branch of the national legislature ought to be chosen by the individual legislatures; to be of the age of thirty years at least; to hold their offices for a term sufficient to insure their independence, namely, seven years; to receive fixed stipends by which they may be compensated for the devotion of their time to the public service, to be paid out of the national treasury; to be ineligible to any office established by a particular state, or under the authority of the United States, (except those peculiarly belonging to the functions of the second branch,) during the term of service, and, under the national government, for the space of one year after its expiration.

“5. *Resolved*, That each branch ought to possess the right of originating acts.

“6. *Resolved*, That the national legislature ought to be empowered to enjoy the legislative rights vested in Congress by the Confederation; and moreover, to legislate in all cases to which the separate states are incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual legislation; to negative all laws passed by the several states contravening, in the opinion of the national legislature,

the Articles of Union or any treaties subsisting under the authority of the Union.

“7. *Resolved*, That the rights of suffrage in the first branch of the national legislature ought not to be according to the rule established in the Articles of Confederation, but according to some equitable ratio of representation; namely, in proportion to the whole number of white and other free citizens and inhabitants, of every age, sex, and condition, including those bound to servitude for a term of years, and three fifths of all other persons, not comprehended in the foregoing description, except Indians not paying taxes in each state.

“8. *Resolved*, That the right of suffrage in the second branch of the national legislature ought to be according to the rule established for the first.

“9. *Resolved*, That a national executive be instituted, to consist of a single person; to be chosen by the national legislature, for the term of seven years; with power to carry into execution the national laws, to appoint to offices in cases not otherwise provided for, to be ineligible a second time, and to be removable on impeachment and conviction of malpractices or neglect of duty; to receive a fixed stipend by which he may be compensated for the devotion of his time to the public service, to be paid out of the national treasury.

“10. *Resolved*, That the national executive shall have a right to negative any legislative act which shall not be afterwards passed [unless] by two thirds of each branch of the national legislature.

“11. *Resolved*, That a national judiciary be established, to consist of one supreme tribunal, the judges of which shall be appointed by the second branch of the national legislature, to hold their offices during good behavior, and to receive punctually, at stated times, a fixed compensation for their services, in which no increase or diminution shall be made so as to affect the persons actually in office at the time of such increase or diminution.

“12. *Resolved*, That the national legislature be empowered to appoint inferior tribunals.

“13. *Resolved*, That the jurisdiction of the national judiciary shall extend to all cases which respect the collection of the na-

tional revenue, impeachments of any national officers, and questions which involve the national peace and harmony.

“ 14. *Resolved*, That provision ought to be made for the admission of states lawfully arising within the limits of the United States, whether from a voluntary junction of government and territory, or otherwise, with the consent of a number of voices in the national legislature less than the whole.

“ 15. *Resolved*, That provision ought to be made for the continuance of Congress, and their authorities and privileges, until a given day after the reform of the Articles of Union shall be adopted, and for the completion of all their engagements.

“ 16. *Resolved*, That a republican constitution, and its existing laws, ought to be guarantied to each state by the United States.

“ 17. *Resolved*, That provision ought to be made for the amendment of the Articles of Union, whensoever it shall seem necessary.

“ 18. *Resolved*, That the legislative, executive, and judiciary powers, within the several states, ought to be bound by oath to support the Articles of Union.

“ 19. *Resolved*, That the amendments which shall be offered to the Confederation by the Convention, ought, at a proper time or times after the approbation of Congress, to be submitted to an assembly or assemblies recommended by the several legislatures, to be expressly chosen by the people to consider and decide thereon.”

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#### RESOLUTIONS INTRODUCED BY PATERSON ON JUNE 15 AND CONSTITUTING THE NEW JERSEY PLAN.

“ 1. *Resolved*, That the Articles of Confederation ought to be so revised, corrected and enlarged, as to render the federal Constitution adequate to the exigencies of government, and the preservation of the Union.

“ 2. *Resolved*, That, in addition to the powers vested in the United States in Congress by the present existing Articles of Confederation, they be authorized to pass acts for raising a rev-

enue, by levying a duty or duties on all goods or merchandises of foreign growth or manufacture, imported into any part of the United States; by stamps on paper, vellum, or parchment; and by a postage on all letters or packages passing through the general post-office;—to be applied to such federal purposes as they shall deem proper and expedient: to make rules and regulations for the collection thereof; and the same, from time to time, to alter and amend in such manner as they shall think proper: to pass acts for the regulation of trade and commerce, as well with foreign nations as with each other;—provided that all punishments, fines, forfeitures, and penalties, to be incurred for contravening such acts, rules, and regulations, shall be adjudged by the common-law judiciaries of the state in which any offence contrary to the true intent and meaning of such acts, rules, and regulations, shall have been committed or perpetrated, with liberty of commencing in the first instance all suits and prosecutions for that purpose in the superior common-law judiciary in such state; subject, nevertheless, for the correction of all errors, both in law and fact, in rendering judgment, to an appeal to the judiciary of the United States.

“3. *Resolved*, That whenever requisitions shall be necessary, instead of the rule for making requisitions mentioned in the Articles of Confederation, the United States in Congress be authorized to make such requisitions in proportion to the whole number of white and other free citizens and inhabitants, of every age, sex, and condition, including those bound to servitude for a term of years, and three fifths of all other persons not comprehended in the foregoing description, except Indians not paying taxes; that, if such requisitions be not complied with in the time specified therein, to direct the collection thereof in the non-complying states, and for that purpose to devise and pass acts directing and authorizing the same;—provided, that none of the powers hereby vested in the United States in Congress shall be exercised without the consent of at least        states; and in that proportion, if the number of confederated states should hereafter be increased or diminished.

“4. *Resolved*, That the United States in Congress be authorized to elect a federal executive, to consist of        persons; to continue in office for the term of        years; to receive punctu-

ally, at stated times, a fixed compensation for their services, in which no increase nor diminution shall be made so as to affect the persons composing the executive at the time of such increase or diminution; to be paid out of the federal treasury; to be incapable of holding any other office or appointment during their time of service, and for      years thereafter; to be ineligible a second time, and removable by Congress, on application by a majority of the executives of the several states: that the executive, besides their general authority to execute the federal acts, ought to appoint all federal officers not otherwise provided for, and to direct all military operations;—provided, that none of the persons composing the federal executive shall, on any occasion, take command of any troops, so as personally to conduct any military enterprise, as general, or in any other capacity.

“5. *Resolved*, That a federal judiciary be established, to consist of a supreme tribunal, the judges of which to be appointed by the executive, and to hold their offices during good behavior; to receive punctually, at stated times, a fixed compensation for their services, in which no increase nor diminution shall be made so as to affect the persons actually in office at the time of such increase or diminution. That the judiciary so established shall have authority to hear and determine, in the first instance, on all impeachments of federal officers, and, by way of appeal, in the dernier resort, in all cases touching the rights of ambassadors; in all cases of captures from an enemy; in all cases of piracies and felonies on the high seas; in all cases in which foreigners may be interested; in the construction of any treaty or treaties, or which may arise on any of the acts for the regulation of trade, or the collection of the federal revenue: that none of the judiciary shall, during the time they remain in office, be capable of receiving or holding any other office or appointment during their term of service, or for      thereafter.

“6. *Resolved*, That all acts of the United States in Congress, made by virtue and in pursuance of the powers hereby, and by the Articles of Confederation, vested in them, and all treaties made and ratified under the authority of the United States, shall be the supreme law of the respective states, so far forth as those acts or treaties shall relate to the said states or their citizens; and that the judiciary of the several states shall be bound

thereby in their decisions, any thing in the respective laws of the individual states to the contrary notwithstanding; and that if any state, or any body of men in any state, shall oppose or prevent the carrying into execution such acts or treaties, the federal executive shall be authorized to call forth the power of the confederated states, or so much thereof as may be necessary, to enforce and compel an obedience to such acts, or an observance of such treaties.

"7. *Resolved*, That provision be made for the admission of new states into the Union.

"8. *Resolved*, That the rule for naturalization ought to be the same in every state.

"9. *Resolved*, That a citizen of one state, committing an offence in another state of the Union, shall be deemed guilty of the same offence as if it had been committed by a citizen of the state in which the offence was committed."

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#### RESOLUTIONS REFERRED TO THE COMMITTEE OF DETAIL.

"1. *Resolved*, That the government of the United States ought to consist of a supreme legislative, judiciary, and executive.

"2. *Resolved*, That the legislature consist of two branches.

"3. *Resolved*, That the members of the first branch of the legislature ought to be elected by the people of the several states for the term of two years; to be paid out of the public treasury; to receive an adequate compensation for their services; to be of the age of twenty-five years at least; to be ineligible to, and incapable of holding, any office under the authority of the United States (except those peculiarly belonging to the functions of the first branch) during the term of service of the first branch.

"4. *Resolved*, That the members of the second branch of the legislature of the United States ought to be chosen by the individual legislatures; to be of the age of thirty years at least; to hold their offices for six years, one third to go out biennially; to receive a compensation for the devotion of their time to the

public service; to be ineligible to, and incapable of holding, any office under the authority of the United States (except those peculiarly belonging to the functions of the second branch) during the term for which they are elected, and for one year thereafter.

“5. *Resolved*, That each branch ought to possess the right of originating acts.

“6. *Resolved*, That the national legislature ought to possess the legislative rights vested in Congress by the Confederation; and, moreover, to legislate in all cases for the general interests of the Union, and also in those to which the states are separately incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual legislation.

“7. *Resolved*, That the legislative acts of the United States, made by virtue and in pursuance of the Articles of Union, and all treaties made and ratified under the authority of the United States, shall be the supreme law of the respective states, as far as those acts or treaties shall relate to the said states, or their citizens and inhabitants; and that the judiciaries of the several states shall be bound thereby in their decisions, any thing in the respective laws of the individual states to the contrary notwithstanding.

“8. *Resolved*, That, in the general formation of the legislature of the United States, the first branch thereof shall consist of sixty-five members; of which number,

“New Hampshire shall send 3; Massachusetts, 8; Rhode Island, 1; Connecticut, 5; New York, 6; New Jersey, 4; Pennsylvania, 8; Delaware, 1; Maryland, 6; Virginia, 10; North Carolina, 5; South Carolina, 5; Georgia, 3.

“But, as the present situation of the states may probably alter in the number of their inhabitants, the legislature of the United States shall be authorized, from time to time, to apportion the number of representatives; and in case any of the states shall hereafter be divided, or enlarged by addition of territory, or any two or more states united, or any new states created within the limits of the United States, the legislature of the United States shall possess authority to regulate the number of representatives, in any of the foregoing cases, upon the principle of their number of inhabitants, according to the provisions here-

after mentioned, namely—Provided always, that representation ought to be proportioned to direct taxation. And, in order to ascertain the alteration in the direct taxation which may be required from time to time, by the changes in the relative circumstances of the states,—

“ 9. *Resolved*, That a census be taken within six years from the first meeting of the legislature of the United States, and once within the term of every ten years afterwards, of all the inhabitants of the United States, in the manner and according to the ratio recommended by Congress in their resolution of the 18th of April, 1783; and that the legislature of the United States shall proportion the direct taxation accordingly.

“ 10. *Resolved*, That all bills for raising or appropriating money, and for fixing the salaries of the officers of the government of the United States, shall originate in the first branch of the legislature of the United States, and shall not be altered or amended by the second branch; and that no money shall be drawn from the public treasury, but in pursuance of appropriations to be originated by the first branch.

“ 11. *Resolved*, That, in the second branch of the legislature of the United States, each state shall have an equal vote.

“ 12. *Resolved*, That a national executive be instituted, to consist of a single person; to be chosen by the national legislature for the term of seven years; to be ineligible a second time; with power to carry into execution the national laws; to appoint to offices in cases not otherwise provided for; to be removable on impeachment, and conviction of malpractice or neglect of duty; to receive a fixed compensation for the devotion of his time to the public service, to be paid out of the public treasury.

“ 13. *Resolved*, That the national executive shall have a right to negative any legislative act; which shall not be afterwards passed, unless by two third parts of each branch of the national legislature.

“ 14. *Resolved*, That a national judiciary be established, to consist of one supreme tribunal, the judges of which shall be appointed by the second branch of the national legislature; to hold their offices during good behavior; to receive punctually, at stated times, a fixed compensation for their services, in which no dimi-

nution shall be made so as to affect the persons actually in office at the time of such diminution.

“ 15. *Resolved*, That the national legislature be empowered to appoint inferior tribunals.

“ 16. *Resolved*, That the jurisdiction of the national judiciary shall extend to cases arising under laws passed by the general legislature, and to such other questions as involve the national peace and harmony.

“ 17. *Resolved*, That provision ought to be made for the admission of states lawfully arising within the limits of the United States, whether from a voluntary junction of government and territory, or otherwise, with the consent of a number of voices in the national legislature less than the whole.

“ 18. *Resolved*, That a republican form of government shall be guarantied to each state; and that each state shall be protected against foreign and domestic violence.

“ 19. *Resolved*, That provision ought to be made for the amendment of the Articles of Union, whensoever it shall seem necessary.

“ 20. *Resolved*, That the legislative, executive, and judiciary powers, within the several states, and of the national government, ought to be bound, by oath, to support the Articles of Union.

“ 21. *Resolved*, That the amendments which shall be offered to the Confederation by the Convention ought, at a proper time or times, after the approbation of Congress, to be submitted to an assembly, or assemblies, of representatives, recommended by the several legislatures, to be expressly chosen by the people to consider and decide thereon.

“ 22. *Resolved*, That the representation in the second branch of the legislature of the United States shall consist of two members from each state, who shall vote *per capita*.

“ 23. *Resolved*, That it be an instruction to the committee to whom were referred the proceedings of the Convention for the establishment of a national government, to receive a clause, or clauses, requiring certain qualifications of property and citizenship in the United States for the executive, the judiciary, and the members of both branches of the legislature of the United States.”

**DRAFT OF CONSTITUTION REPORTED BY THE COMMITTEE OF DETAIL ON AUGUST 6.**

“ We, the people of the states of New Hampshire, Massachusetts, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, do ordain, declare, and establish, the following Constitution for the government of ourselves and our posterity :—

“ **ARTICLE I.** The style of the government shall be, ‘The United States of America.’

“ **ART. II.** The government shall consist of supreme legislative, executive, and judicial powers.

“ **ART. III.** The legislative power shall be vested in a Congress, to consist of two separate and distinct bodies of men, a House of Representatives and a Senate; each of which shall in all cases have a negative on the other. The legislature shall meet on the first Monday in December in every year.

“ **ART. IV., SECT. 1.** The members of the House of Representatives shall be chosen, every second year, by the people of the several states comprehended within this Union. The qualifications of the electors shall be the same, from time to time, as those of the electors, in the several states, of the most numerous branch of their own legislatures.

“ **SECT. 2.** Every member of the House of Representatives shall be of the age of twenty-five years at least; shall have been a citizen in the United States for at least three years before his election; and shall be, at the time of his election, a resident of the state in which he shall be chosen.

“ **SECT. 3.** The House of Representatives shall, at its first formation, and until the number of citizens and inhabitants shall be taken in the manner hereinafter described, consist of sixty-five members, of whom three shall be chosen in New Hampshire, eight in Massachusetts, one in Rhode Island and Providence Plantations, five in Connecticut, six in New York, four in New Jersey, eight in Pennsylvania, one in Delaware, six in Maryland, ten in Virginia, five in North Carolina, five in South Carolina, and three in Georgia.

"SECT. 4. As the proportions of numbers in different states will alter from time to time; as some of the states may hereafter be divided; as others may be enlarged by addition of territory; as two or more states may be united; as new states will be erected within the limits of the United States,—the legislature shall, in each of these cases, regulate the number of representatives by the number of inhabitants, according to the provisions hereinafter made, at the rate of one for every forty thousand.

"SECT. 5. All bills for raising or appropriating money, and for fixing the salaries of the officers of government, shall originate in the House of Representatives, and shall not be altered or amended by the Senate. No money shall be drawn from the public treasury, but in pursuance of appropriations that shall originate in the House of Representatives.

"SECT. 6. The House of Representatives shall have the sole power of impeachment. It shall choose its speaker and other officers.

"SECT. 7. Vacancies in the House of Representatives shall be supplied by writs of election from the executive authority of the state in the representation from which they shall happen.

"ART. V., SECT. 1. The Senate of the United States shall be chosen by the legislatures of the several states. Each legislature shall choose two members. Vacancies may be supplied by the executive until the next meeting of the legislature. Each member shall have one vote.

"SECT. 2. The senators shall be chosen for six years; but immediately after the first election, they shall be divided, by lot, into three classes, as nearly as may be, numbered one, two, and three. The seats of the members of the first class shall be vacated at the expiration of the second year; of the second class at the expiration of the fourth year; of the third class at the expiration of the sixth year; so that a third part of the members may be chosen every second year.

"SECT. 3. Every member of the Senate shall be of the age of thirty years at least; shall have been a citizen in the United States for at least four years before his election; and shall be, at the time of his election, a resident of the state for which he shall be chosen.

“SECT. 4. The Senate shall choose its own President and other officers.

“ART. VI., SECT. 1. The times, and places, and manner, of holding the elections of the members of each House, shall be prescribed by the legislature of each state ; but their provisions concerning them may, at any time, be altered by the legislature of the United States.

“SECT. 2. The legislature of the United States shall have authority to establish such uniform qualifications of the members of each House, with regard to property, as to the said legislature shall seem expedient.

“SECT. 3. In each House a majority of the members shall constitute a quorum to do business ; but a smaller number may adjourn from day to day.

“SECT. 4. Each House shall be the judge of the elections, returns, and qualifications, of its own members.

“SECT. 5. Freedom of speech and debate in the legislature shall not be impeached or questioned in any court or place out of the legislature ; and the members of each House shall, in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at Congress, and in going to and returning from it.

“SECT. 6. Each House may determine the rules of its proceedings ; may punish its members for disorderly behavior ; and may expel a member.

“SECT. 7. The House of Representatives, and the Senate when it shall be acting in a legislative capacity, shall keep a journal of their proceedings ; and shall, from time to time, publish them ; and the yeas and nays of the members of each House, on any question, shall, at the desire of one fifth part of the members present, be entered on the Journal.

“SECT. 8. Neither House, without the consent of the other, shall adjourn for more than three days, nor to any other place than that at which the two Houses are sitting. But this regulation shall not extend to the Senate when it shall exercise the powers mentioned in the Article.

“SECT. 9. The members of each House shall be ineligible to, and incapable of holding, any office under the authority of the United States, during the time for which they shall respectively

be elected ; and the members of the Senate shall be ineligible to, and incapable of holding, any such office for one year afterwards.

“SECT. 10. The members of each House shall receive a compensation for their services, to be ascertained and paid by the state in which they shall be chosen.

“SECT. 11. The enacting style of the laws of the United States shall be, ‘ Be it enacted, and it is hereby enacted, by the House of Representatives, and by the Senate, of the United States, in Congress assembled.’

“SECT. 12. Each House shall possess the right of originating bills, except in the cases before mentioned.

“SECT. 13. Every bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a law, be presented to the President of the United States for his revision. If, upon such revision, he approve of it, he shall signify his approbation by signing it. But if, upon such revision, it shall appear to him improper for being passed into a law, he shall return it, together with his objections against it, to that House in which it shall have originated ; who shall enter the objections at large on their Journal, and proceed to reconsider the bill. But if, after such reconsideration, two thirds of that House shall, notwithstanding the objections of the President, agree to pass it, it shall, together with his objections, be sent to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of the other House also, it shall become a law. But, in all such cases, the votes of both Houses shall be determined by yeas and nays ; and the names of the persons voting for or against the bill shall be entered on the Journal of each House respectively. If any bill shall not be returned by the President within seven days after it shall have been presented to him, it shall be a law, unless the legislature, by their adjournment, prevent its return, in which case it shall not be a law.

“ART. VII., SECT. 1. The legislature of the United States shall have the power to lay and collect taxes, duties, imposts, and excises ;

“To regulate commerce with foreign nations, and among the several states ;

“To establish an uniform rule of naturalization throughout the United States ;

“To coin money;  
“To regulate the value of foreign coin;  
“To fix the standard of weights and measures;  
“To establish post-offices;  
“To borrow money, and emit bills, on the credit of the United States;  
“To appoint a treasurer by ballot;  
“To constitute tribunals inferior to the supreme court;  
“To make rules concerning captures on land and water;  
“To declare the law and punishment of piracies and felonies committed on the high seas, and the punishment of counterfeiting the coin of the United States, and of offences against the law of nations;  
“To subdue a rebellion in any state, on the application of its legislature;  
“To make war;  
“To raise armies;  
“To build and equip fleets;  
“To call forth the aid of the militia, in order to execute the laws of the Union, enforce treaties, suppress insurrections, and repel invasions;  
“And to make all laws that shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

“SECT. 2. Treason against the United States shall consist only in levying war against the United States, or any of them; and in adhering to the enemies of the United States, or any of them. The legislature of the United States shall have power to declare the punishment of treason. No person shall be convicted of treason, unless on the testimony of two witnesses. No attainder of treason shall work corruption of blood, nor forfeiture, except during the life of the person attainted.

“SECT. 3. The proportions of direct taxation shall be regulated by the whole number of white and other free citizens and inhabitants of every age, sex, and condition, including those bound to servitude for a term of years, and three fifths of all other persons not comprehended in the foregoing description, (except Indians not paying taxes:) which number shall, within six years

after the first meeting of the legislature, and within the term of every ten years afterwards, be taken in such a manner as the said legislature shall direct.

"SECT. 4. No tax or duty shall be laid by the legislature on articles exported from any state; nor on the migration or importation of such persons as the several states shall think proper to admit; nor shall such migration or importation be prohibited.

"SECT. 5. No capitation tax shall be laid, unless in proportion to the census hereinbefore directed to be taken.

"SECT. 6. No navigation act shall be passed without the assent of two thirds of the members present in each House.

"SECT. 7. The United States shall not grant any title of nobility.

"ART. VIII. The acts of the legislature of the United States made in pursuance of this Constitution, and all treaties made under the authority of the United States, shall be the supreme law of the several states, and of their citizens and inhabitants; and the judges in the several states shall be bound thereby in their decisions, any thing in the constitutions or laws of the several states to the contrary notwithstanding.

"ART. IX., SECT. 1. The Senate of the United States shall have power to make treaties, and to appoint ambassadors, and judges of the supreme court.

"SECT. 2. In all disputes and controversies now subsisting, or that may hereafter subsist, between two or more states, respecting jurisdiction or territory, the Senate shall possess the following powers:—Whenever the legislature, or the executive authority, or lawful agent of any state, in controversy with another, shall, by memorial to the Senate, state the matter in question, and apply for a hearing, notice of such memorial and application shall be given, by order of the Senate, to the legislature, or the executive authority, of the other state in controversy. The Senate shall also assign a day for the appearance of the parties, by their agents, before that House. The agents shall be directed to appoint, by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question. But if the agents cannot agree, the Senate shall name three persons out of each of the several states; and from the list of such persons, each party shall alternately strike out one, until

the number shall be reduced to thirteen; and from that number not less than seven, nor more than nine, names, as the Senate shall direct, shall, in their presence, be drawn out by lot; and the persons whose names shall be so drawn, or any five of them, shall be commissioners or judges to hear and finally determine the controversy; provided a majority of the judges who shall hear the cause agree in the determination. If either party shall neglect to attend at the day assigned, without showing sufficient reasons for not attending, or being present shall refuse to strike, the Senate shall proceed to nominate three persons out of each state, and the Clerk of the Senate shall strike in behalf of the party absent or refusing. If any of the parties shall refuse to submit to the authority of such court, or shall not appear to prosecute or defend their claim or cause, the court shall nevertheless proceed to pronounce judgment. The judgment shall be final and conclusive. The proceedings shall be transmitted to the President of the Senate, and shall be lodged among the public records, for the security of the parties concerned. Every commissioner shall, before he sit in judgment, take an oath, to be administered by one of the judges of the supreme or superior court of the state where the cause shall be tried, 'well and truly to hear and determine the matter in question, according to the best of his judgment, without favor, affection, or hope of reward.'

"SECT. 3. All controversies concerning lands claimed under different grants of two or more states, whose jurisdictions, as they respect such lands, shall have been decided or adjusted subsequently to such grants, or any of them, shall, on application to the Senate, be finally determined, as near as may be, in the same manner as is before prescribed for deciding controversies between different states.

"ART. X., SECT. 1. The executive power of the United States shall be vested in a single person. His style shall be, 'The President of the United States of America,' and his title shall be, 'His Excellency.' He shall be elected by ballot by the legislature. He shall hold his office during the term of seven years; but shall not be elected a second time.

"SECT. 2. He shall, from time to time, give information to the legislature of the state of the Union. He may recommend to

their consideration such measures as he shall judge necessary and expedient. He may convene them on extraordinary occasions. In case of disagreement between the two Houses, with regard to the time of adjournment, he may adjourn them to such time as he thinks proper. He shall take care that the laws of the United States be duly and faithfully executed. He shall commission all the officers of the United States; and shall appoint officers in all cases not otherwise provided for by this Constitution. He shall receive ambassadors, and may correspond with the supreme executives of the several states. He shall have power to grant reprieves and pardons, but his pardon shall not be pleadable in bar of an impeachment. He shall be commander-in-chief of the army and navy of the United States, and of the militia of the several states. He shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during his continuance in office. Before he shall enter on the duties of his department, he shall take the following oath or affirmation, 'I solemnly swear (or affirm) that I will faithfully execute the office of President of the United States of America.' He shall be removed from his office on impeachment by the House of Representatives, and conviction, in the supreme court, of treason, bribery, or corruption. In case of his removal, as aforesaid, death, resignation, or disability to discharge the powers and duties of his office, the President of the Senate shall exercise those powers and duties until another President of the United States be chosen, or until the disability of the President be removed.

"ART. XI., SECT. 1. The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as shall, when necessary, from time to time, be constituted by the legislature of the United States.

"SECT. 2. The judges of the supreme court, and of the inferior courts, shall hold their offices during good behavior. They shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

"SECT. 3. The jurisdiction of the supreme court shall extend to all cases arising under laws passed by the legislature of the United States; to all cases affecting ambassadors, other public

ministers and consuls; to the trial of impeachments of officers of the United States; to all cases of admiralty and maritime jurisdiction; to controversies between two or more states, (except such as shall regard territory or jurisdiction;) between a state and citizens of another state; between citizens of different states; and between a state or the citizens thereof, and foreign states, citizens or subjects. In cases of impeachment, cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, this jurisdiction shall be original. In all the other cases before mentioned, it shall be appellate, with such exceptions, and under such regulations, as the legislature shall make. The legislature may assign any part of the jurisdiction above mentioned, (except the trial of the President of the United States,) in the manner and under the limitations which it shall think proper, to such inferior courts as it shall constitute from time to time.

“SECT. 4. The trial of all criminal offences (except in cases of impeachment) shall be in the state where they shall be committed; and shall be by jury.

“SECT. 5. Judgment, in cases of impeachment, shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit, under the United States. But the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law.

“ART. XII. No state shall coin money; nor grant letters of marque and reprisal; nor enter into any treaty, alliance, or confederation; nor grant any title of nobility.

“ART. XIII. No state, without the consent of the legislature of the United States, shall emit bills of credit, or make any thing but specie a tender in payment of debts; nor lay imposts or duties on imports; nor keep troops or ships of war in time of peace; nor enter into any agreement or compact with another state, or with any foreign power; nor engage in any war, unless it shall be actually invaded by enemies, or the danger of invasion be so imminent as not to admit of a delay until the legislature of the United States can be consulted.

“ART. XIV. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

“ART. XV. Any person charged with treason, felony, or high misdemeanor in any state, who shall flee from justice, and shall be found in any other state, shall, on demand of the executive power of the state from which he fled, be delivered up and removed to the state having jurisdiction of the offence.

“ART. XVI. Full faith shall be given in each state to the acts of the legislatures, and to the records and judicial proceedings of the courts and magistrates of every other state.

“ART. XVII. New states lawfully constituted or established within the limits of the United States may be admitted, by the legislature, into this government; but to such admission the consent of two thirds of the members present in each House shall be necessary. If a new state shall arise within the limits of any of the present states, the consent of the legislatures of such states shall be also necessary to its admission. If the admission be consented to, the new states shall be admitted on the same terms with the original states. But the legislature may make conditions with the new states concerning the public debt which shall be then subsisting.

“ART. XVIII. The United States shall guaranty to each state a republican form of government; and shall protect each state against foreign invasions, and, on the application of its legislature, against domestic violence.

“ART. XIX. On the application of the legislatures of two thirds of the states in the Union, for an amendment of this Constitution, the legislature of the United States shall call a convention for that purpose.

“ART. XX. The members of the legislatures, and the executive and judicial officers of the United States, and of the several states, shall be bound by oath to support this Constitution.

“ART. XXI. The ratification of the conventions of        states shall be sufficient for organizing this Constitution.

“ART. XXII. This Constitution shall be laid before the United States in Congress assembled, for their approbation; and it is the opinion of this Convention, that it should be afterwards submitted to a convention chosen in each state, under the recommendation of its legislature, in order to receive the ratification of such convention.

“ART. XXIII. To introduce this government, it is the opinion

of this Convention, that each assenting convention should notify its assent and ratification to the United States in Congress assembled; that Congress, after receiving the assent and ratification of the conventions of      states, should appoint and publish a day, as early as may be, and appoint a place, for commencing proceedings under this Constitution; that, after such publication, the legislatures of the several states should elect members of the Senate and direct the election of members of the House of Representatives; and that the members of the legislature should meet at the time and place assigned by Congress, and should, as soon as may be after their meeting, choose the President of the United States, and proceed to execute this Constitution."

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#### THE CONSTITUTION AS REPORTED BY THE COMMITTEE ON STYLE ON SEPTEMBER 12.

"We, the people of the United States, in order to form a more perfect union, to establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

"ART. I., SECT. 1. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

"SECT. 2. The House of Representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

"No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

"Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined

by adding to the whole number of free persons, including those bound to servitude for a term of years, and excluding Indians not taxed, three fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every forty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

"When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

"The House of Representatives shall choose their speaker and other officers; and they shall have the sole power of impeachment.

"SECT. 3. The Senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.

"Immediately after they shall be assembled in consequence of the first election, they shall be divided, as equally as may be, into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year; of the second class at the expiration of the fourth year; and of the third class at the expiration of the sixth year; so that one third may be chosen every second year. And if vacancies happen by resignation, or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature.

"No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

"The Vice-President of the United States shall be, *ex officio*, president of the Senate, but shall have no vote, unless they be equally divided.

"The Senate shall choose their other officers, and also a president *pro tempore*, in the absence of the Vice-President, or when he shall exercise the office of President of the United States.

"The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath. When the President of the United States is tried, the chief justice shall preside; and no person shall be convicted without the concurrence of two thirds of the members present.

"Judgment, in cases of impeachment, shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit, under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law.

"SECT. 4. The times, places, and manner, of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; but the Congress may at any time by law make or alter such regulations.

"The Congress shall assemble at least once in every year; and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

"SECT. 5. Each house shall be the judge of the elections, returns, and qualifications, of its own members; and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each house may provide.

"Each house may determine the rules of its proceedings; punish its members for disorderly behavior; and, with the concurrence of two thirds, expel a member.

"Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may, in their judgment, require secrecy; and the yeas and nays of the members of either house on any question shall, at the desire of one fifth of those present, be entered on the Journal.

"Neither house, during the session of Congress, shall, without consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

"SECT. 6. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

"No senator or representative shall, during the time for which he was elected, be appointed to any civil office, under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office.

"SECT. 7. The enacting style of the laws shall be, '*Be it enacted by the senators and representatives, in Congress assembled.*'

"All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments, as on other bills.

"Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States. If he approve, he shall sign it; but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their Journal, and proceed to reconsider it. If, after such reconsideration, two thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered; and if approved by two thirds of that house, it shall become a law. But in all such cases, the votes of both houses shall be decided by yeas and nays; and the names of the persons voting for and against the bill shall be entered on the Journal of each house respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress, by its adjournment, prevent its return; in which case it shall not be a law.

"Every order, resolution, or vote, to which the concurrence of the Senate and House of Representatives may be necessary, (except on the question of adjournment,) shall be presented to the President of the United States, and, before the same shall take effect, shall be approved by him, or, being disapproved by him, shall be repassed by three fourths of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

"SECT. 8. The Congress may, by joint ballot, appoint a treasurer. They shall have power to lay and collect taxes, duties, imposts, and excises; to pay the debts, and provide for the common defence and general welfare, of the United States;

"To borrow money on the credit of the United States;

"To regulate commerce with foreign nations, among the several states, and with the Indian tribes;

"To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies, throughout the United States;

"To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

"To provide for the punishment of counterfeiting the securities and current coin of the United States;

"To establish post-offices and post-roads;

"To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries;

"To constitute tribunals inferior to the Supreme Court;

"To define and punish piracies and felonies committed on the high seas, and offences against the law of nations;

"To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

"To raise and support armies,—but no appropriation of money to that use shall be for a longer term than two years;

"To provide and maintain a navy;

"To make rules for the government and regulation of the land and naval forces;

"To provide for the calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions;

"To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the [service of the] United States—reserving to the states, respectively, the appointment of the officers, and the authority of training the militia, according to the discipline prescribed by Congress;

"To exercise exclusive legislation, in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of government of the United States; and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings; and,

"To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

"SECT. 9. The migration or importation of such persons as the several states, now existing, shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight; but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

"The privilege of the writ of *habeas corpus* shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.

"No bill of attainder shall be passed, or any *ex post facto* law.

"No capitation tax shall be laid, unless in proportion to the census herein before directed to be taken.

"No tax or duty shall be laid on articles exported from any state.

"No money shall be drawn from the treasury, but in consequence of appropriations made by law.

"No title of nobility shall be granted by the United States.

"And no person holding any office of profit or trust under them, shall, without the consent of Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

"SECT. 10. No state shall coin money, nor emit bills of credit,

nor make any thing but gold and silver coin a tender in payment of debts, nor pass any bill of attainder, nor *ex post facto* laws, nor laws altering or impairing the obligation of contracts; nor grant letters of marque and reprisal; nor enter into any treaty, alliance, or confederation; nor grant any title of nobility.

“No state shall, without the consent of Congress, lay imposts or duties on imports or exports, nor with such consent, but to the use of the treasury of the United States; nor keep troops or ships of war in time of peace; nor enter into any agreement or compact with another state, nor with any foreign power; nor engage in any war, unless it shall be actually invaded by enemies, or the danger of invasion be so imminent as not to admit of delay until the Congress can be consulted.

“ART. II., SECT. 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice-President, chosen for the same term, be elected in the following manner:—

“Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors equal to the whole number of senators and representatives to which the state may be entitled in Congress; but no senator or representative shall be appointed an elector, nor any person holding an office of trust or profit under the United States.

“The electors shall meet in their respective states, and vote by ballot for two persons, of whom one, at least, shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the general government, directed to the president of the Senate. The president of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates; and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then

from the five highest on the list the said house shall, in like manner, choose the President. But in choosing the President, the votes shall be taken by states, and not *per capita*, the representation from each state having one vote. A quorum for this purpose shall consist of a member or members from two thirds of the states; and a majority of all the states shall be necessary to a choice. In every case, after the choice of the President by the representatives, the person having the greatest number of votes of the electors shall be the Vice-President. But if there should remain two or more who have equal votes, the Senate shall choose from them, by ballot, the Vice-President.

“The Congress may determine the time of choosing the electors, and the time in which they shall give their votes; but the election shall be on the same day throughout the United States.

“No person except a natural-born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

“In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President; and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President; and such officer shall act accordingly, until the disability be removed, or the period for choosing another President arrive.

“The President shall, at stated times, receive a fixed compensation for his services, which shall neither be increased nor diminished during the period for which he shall have been elected.

“Before he enter on the execution of his office, he shall take the following oath or affirmation:—

“‘I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my judgment and power, preserve, protect, and defend the Constitution of the United States.’

"SECT. 2. The President shall be commander-in-chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States.

"He may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices. And he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

"He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint, ambassadors, other public ministers, and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for.

"The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions, which shall expire at the end of the next session.

"SECT. 3. He shall, from time to time, give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient. He may, on extraordinary occasions, convene both houses, or either of them; and in case of disagreement between them with respect to the time of adjournment, he may adjourn them to such time as he shall think proper. He shall receive ambassadors and other public ministers. He shall take care that the laws be faithfully executed; and shall commission all the officers of the United States.

"SECT. 4. The President, Vice-President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

"ART. III., SECT. 1. The judicial power of the United States, both in law and equity, shall be vested in one Supreme Court, and in such inferior courts as the Congress may, from time to time, ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior,

and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

“SECT. 2. The judicial power shall extend to all cases, both in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states; between a state and citizens of another state; between citizens of different states; between citizens of the same state claiming lands under grants of different states; or between a state, or the citizens thereof, and foreign states, citizens, or subjects.

“In cases affecting ambassadors, other public ministers, and consuls, and those in which a state shall be a party, the Supreme Court shall have original jurisdiction. In all other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact,—with such exceptions, and under such regulations, as the Congress shall make.

“The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crime shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.

“SECT. 3. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.

“The Congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood, nor forfeiture, except during the life of the person attainted.

“ART. IV., SECT. 1. Full faith and credit shall be given, in each state, to the public acts, records, and judicial proceedings, of every other state. And the Congress may, by general laws, prescribe the manner in which such acts, records, and proceedings, shall be proved, and the effect thereof.

"SECT. 2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

"A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, and removed to the state having jurisdiction of the crime.

"No person legally held to service or labor in one state, escaping into another, shall, in consequence of regulations subsisting therein, be discharged from such service or labor, but shall be delivered up, on claim of the party to whom such service or labor may be due.

"SECT. 3. New states may be admitted by the Congress into this Union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned, as well as of the Congress.

"The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claim of the United States, or of any particular state.

"SECT. 4. The United States shall guaranty to every state in this Union a republican form of government, and shall protect each of them against invasion, and, on application of the legislature or executive, against domestic violence.

"ART. V. The Congress, whenever two thirds of both houses shall deem necessary, or on the application of two thirds of the legislatures of the several states, shall propose amendments to this Constitution, which shall be valid, to all intents and purposes, as part thereof, when the same shall have been ratified by three fourths, at least, of the legislatures of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided, that no amendment which may be made prior to the year 1808 shall in any manner affect the \_\_\_\_\_ and \_\_\_\_\_ sections of article \_\_\_\_\_.

"ART. VI. All debts contracted, and engagements entered

into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution as under the Confederation.

“This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the Constitution or laws of any state to the contrary notwithstanding.

“The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound, by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office of public trust under the United States.

“ART. VII. The ratification of the conventions of nine states shall be sufficient for the establishment of this Constitution between the states so ratifying the same.”

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## CONSTITUTION OF THE UNITED STATES OF AMERICA.

WE THE PEOPLE of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this CONSTITUTION for the United States of America.

### ARTICLE I.

SECTION 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

SECTION 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the

Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the Age of twenty-five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of Free persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

SECTION 3. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The seats of the Senators of the first Class shall be vacated at the Expiration of the second year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one-third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature

of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: and no Person shall be convicted without the Concurrence of two thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

SECTION 4. The Times, Places and manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

SECTION 5. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Each House may determine the Rules of its Proceedings,

punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those present, be entered on the Journal.

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

SECTION 6. The Senators and Representatives shall receive a Compensation for their services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

SECTION 7. All bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House, it

shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

SECTION 8. The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings ;—And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

SECTION 9. The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

No Bill of Attainder or ex post facto Law shall be passed.

No Capitation, or other direct, tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

No Tax or Duty shall be laid on Articles exported from any State.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

SECTION 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

## ARTICLE II.

SECTION 1. The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

The electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately chuse by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said House shall in like manner chuse the President. But in chusing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice President. But if there should remain two or more who have equal votes, the Senate shall chuse from them by ballot the Vice President.

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

No person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that office who shall not have attained to

the Age of thirty five Years, and been fourteen Years a Resident within the United States.

In Case of the Removal of the President from Office, or of his Death, Resignation or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be encreased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation :—"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

SECTION 2. The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States ; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

SECTION 3. He shall from time to time give to the Congress Information of the state of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and, in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

SECTION 4. The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

### ARTICLE III.

SECTION 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

SECTION 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and

Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

SECTION 3. Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

#### ARTICLE IV.

SECTION 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

SECTION 2. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

A person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up to be removed to the State having Jurisdiction of the Crime.

No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

SECTION 3. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within

the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

SECTION 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

## ARTICLE V.

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

## ARTICLE VI.

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or

which shall be made, under the Authority of the United States, shall be the supreme Law of the Land ; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution ; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

#### ARTICLE VII.

The ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

DONE in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven, and of the Independance of the United States of America the Twelfth

IN WITNESS whereof We have hereunto subscribed our Names,

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